



**REGULAR MEETING  
CITY OF ROSWELL COUNCIL - AGENDA  
THURSDAY, APRIL 14, 2016  
Roswell Museum and Art Center  
Bassett Auditorium - 100 W. 11th Street  
Roswell, New Mexico 88201**

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution No. 15-56. Except for emergency matters, the City Council shall take action only on the specific items listed on the Agenda.

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APRIL 14, 2016

MAYOR - Dennis J. Kintigh

6:00 p.m.

Ward 1  
Juan Oropesa  
Natasha Mackey

Ward II  
Steve Henderson  
Caleb T. Grant

Ward III  
Art Sandoval  
Jeanine Best

Ward IV  
Jason Perry  
Savino Sanchez Jr.

Ward V  
Barry Foster  
Tabitha D. Denny

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WELCOME! We are very glad you have joined us for the Roswell City Council meeting. If you wish to speak, please sign up at the podium prior to 6:00 p.m. All matters listed under Consent Items/Consent Agenda are considered routine by the City Council and will be approved by one motion. There will be no separate discussion on these items. If two members of the council desire to discuss the matter, that item will be removed from the consent agenda and will be considered separately. Any item approved as part of the consent agenda is not an agenda item for the purpose of public participation. The Council is pleased to hear relevant comments; however, a 3-minute limit is set in accordance with Resolution 15-56. Large groups are asked to name a spokesperson. Robert's Rules of Order govern the conduct of the meeting. "THANK YOU" for participating in your City Government.

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**OPENING CEREMONIES**

Call to Order by Presiding Officer  
Roll Call & Determination of Quorum  
Pledge of Allegiance to the Flag and Invocation  
Agenda/Consent Items/Minutes from the

**NON-ACTION ITEMS (Information Items)**

1. Presentation - Charlie's Angels Dance Team/Head Coach Kim Castro - Roswell High School - Mayor Kintigh
2. Presentation - Roswell Lady Coyote Basketball team - Mayor Kintigh
3. Presentation - Outstanding Citizen Award - Councilor Denny
4. Presentation - National Lineman Appreciation Day - Mayor Kintigh

## **PUBLIC PARTICIPATION ON AGENDA ITEMS**

In order to speak you must sign up prior to the Council Meeting.

## **PUBLIC HEARING(S)**

5. Proposed Ordinance 16-06 - To hold a public hearing and vote on the adoption of Proposed Ordinance 16-06 the Cableone Franchise. (Perry/Zarr)
6. Proposed Ordinance 16-07 - To hold a public hearing and vote on the adoption of Proposed Ordinance 16-07 Convention Center Fees. (Perry/Zarr)

## **CONSENT ITEMS**

### **Bids and RFP's**

7. Consider approval of purchase of Personal Protective Equipment (PPE), i.e. bunker gear, for the Fire Department.

### **RIAC Leases**

8. Consider approval to authorize the Old Dog Brotherhood, Roswell Chapter, to renew their current lease agreement on Building No. 734.
9. Consider approval to authorize Cliff Waide, an individual, to renew his current lease agreement on "T" Hangar Building No. 120, Space 4.

### **Resolution(s)**

10. Resolution 16-25 - Weeds - The Resolution shall mandate the cleanup of approximately one hundred and six (106) separate properties within the City.
11. Resolution 16-26 - Condemnations - The Resolution shall require the removal or demolition of six (6) dilapidated structures.

### **Lodger's Tax Request**

12. Consider funding of Lodgers' Tax for the Rotary Clubs of Roswell Annual Desert Sun Charity Golf Championship in the amount of \$1,700.
13. Consider approval of funding for the Roswell Kick It! 3v3 Soccer Tournament "Under the Lights" in the amount of \$1,500.

### **Minutes**

14. Consider approval of the minutes from the March 10, 2016 Regular City Council meeting.
15. Consider approval of the minutes from the City Council Workshop March 18, 2016 and March 19, 2016.

## **NEW BUSINESS / REGULAR ITEMS**

### **Resolution(s)**

16. Resolution 16-27 - Consider approval of Resolution 16-26 for a budget amendment for overtime at the Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament - \$3,000. (Grant/Garcia)
17. Resolution 16-28 - City Council is asked to consider Resolution 16-28 - Budget Amendment for FY2016 Budget Reductions.(Grant/Garcia)
18. Resolution 16-29 - Consider approval of Resolution 16-29 for a budget amendment for the Convention Center Feasibility Study for Gross Receipts Tax in the amount of \$3,593.75. (Grant/Garcia)
19. Resolution 16-30 - Consider approval of Resolution 16-30 the decommissioning of the Cahoon Park Pool. (Denny/J. Phillips)

### **Request(s)**

20. Consider approval of funding for the 2016 Bottomless Triathlon (July 9, 2016) in the amount of \$2,000.
21. Consider approval of the Roswell Museum and Art Center Roof Replacement Award.
22. Proposed Ordinance 16-08 - Consider to advertise for a public hearing on Proposed Ordinance 16-08 amending Section 2 of Article 9 of the Zoning Ordinance to allow day care as a special use in R-3 districts, and amending Section 7 of Article 26 by adding new sign standards for certain permitted uses in residential districts. (Perry/Zarr)
23. Proposed Ordinance 16-09 - Consider to advertise for a public hearing on Proposed Ordinance 16-09 – Amended and Restated Drinking Water Loan No. 3205-DW. (Grant/Najar/Garcia)
24. Consider approval of entry way signs (Grant/Morris)
25. Consider approval of the following appointments for the Occupancy Tax Board (OTB):  
(Sanchez/Mayor)
  - Position 1 (Lodging) - partial term from 4/1/2016 to 3/31/2017
  - Position 3 (At Large) - full term from 4/1/2016 to 3/31/2020
  - Position 5 (Tourist Related) - full term from 4/1/2016 to 3/31/2020

## **CLOSED SESSION**

26. CLOSED SESSION - Pursuant to NMSA 1978, § 10-15-1(H)(7), to discuss attorney-client privilege pertaining to threatened or pending litigation in which the City of Roswell is or may become a participant. (Sanchez/Zarr)

## **DEPARTMENT REPORTS**

27. Department reports:
- Gross Receipts Tax
  - Lodgers' Tax
  - HR Report
  - Roswell Public Library
  - Fire Department
  - Police Department
  - Convention and Civic Center
  - Parks and Recreation
  - Code Enforcement
  - RIAC

### **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**

In order to speak you must sign up prior to the Council Meeting.

### **Adjournment**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents including the agenda and minutes can be provided in various accessible formats. Please contact the City Clerk at 575-624-6700 if a summary of other type of accessible format is needed.

Printed and posted: **Friday, April 8, 2016**



**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 1.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** N/A

**CHAIR:** N/A

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**ACTION REQUESTED:**

Presentation - Charlie's Angels Dance Team/Head Coach Kim Castro - Roswell High School - Mayor Kintigh

**BACKGROUND:**

Charlie's Angels Dance Team won first place in the Large Varsity Pom Division at the 2016 National Dance Alliance Championships in Orlando, Florida on Saturday, February 27, 2016.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Not applicable.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 2.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** N/A

**CHAIR:** N/A

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**ACTION REQUESTED:**

Presentation - Roswell Lady Coyote Basketball team - Mayor Kintigh

**BACKGROUND:**

The Roswell Lady Coyote Basketball team was first established in 1975. In the first 26 years, the Lady Coyotes made two appearances in the Final Four of the state tournament. Roswell Lady Coyote Basketball has seen historic success under the direction of Coach Joe Carpenter who has been the Lady Coyote Basketball Coach since 2001. In the last sixteen years, the Lady Coyotes have won 13 consecutive regular season district championships and 12 district tournament championships. The Lady Coyotes have made 14 consecutive appearances in the state tournament. They have 12 Final Four appearances, 3 state championship runner-ups and won this year's state championship.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Not applicable.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 3.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** N/A

**CHAIR:** N/A

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**ACTION REQUESTED:**

Presentation - Outstanding Citizen Award - Councilor Denny

**BACKGROUND:**

The Outstanding Citizen Award recognizes and honors individuals who strive toward the highest level of professional accomplishments. Anyone who excels in their chosen profession, have devoted significant time and energy to improve the community's quality of life and has provided leadership to assist others in becoming involved in the community.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Not applicable.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 4.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** N/A

**CHAIR:** N/A

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**ACTION REQUESTED:**

Presentation - National Lineman Appreciation Day - Mayor Kintigh

**BACKGROUND:**

This day was first recognized on April 10, 2013, by the U.S. Senate by Resolution. The resolution recognizes and supports their profession and the contributions of these brave men and women.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Not applicable.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 5.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Legal

**CONTACT:** William Zarr

**CHAIR:** Jason Perry

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**ACTION REQUESTED:**

Proposed Ordinance 16-06 - To hold a public hearing and vote on the adoption of Proposed Ordinance 16-06 the Cableone Franchise. (Perry/Zarr)

**BACKGROUND:**

Proposed Ordinance No. 16-06 provides for the grant of a Franchise agreement with Cable One, Inc. (Franchisee) that will continue to allow the Franchisee to utilize the City's right of way to build and maintain a cable system in order to provide cable services within the City.

Cable One, Inc., and its predecessors in interest have operated a cable system in the City of Roswell pursuant to various franchises granted under City Ordinance Numbers 995, 1057, 1116, 1184. It currently operates under City Ordinance Number 04-04 - which expired on January 1, 2015, but the terms of which the parties have continued to honor and operate under.

The new Franchise will expire on January 1, 2026. The terms of the new franchise are substantially similar to the terms of the present franchise under Ordinance 04-04. The Franchisee will continue to pay a franchise fee in the amount of 5% of its gross revenues from cable services. This does not include internet or telephony services which do not fall under the definition of cable services under federal law. Payments are to be made quarterly, and the City has the right to audit. The Franchise will continue to provide one channel for PEG (Public, Education and Government) use.

The Franchise provides detailed provisions on transfers by the Franchisee; conditions on the use of property; construction standards; general system design; system facilities, equipment and services; interconnectivity; PEG channel use; inspection of books and records relative to compliance; insurance, surety and indemnification and performance guarantees; and various remedies for violation of the Franchise agreement.

Also attached are additional amendments that specify those City facilities to be provided with cable service, as well as an agreement by Franchisee to pay the cost of equipment necessary for the transmission of City Council meetings on cable.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Under the franchise agreement, Cable One pays a franchise fee of 5% of its gross revenues from cable services. Franchise fee revenues paid for fiscal years 2013-2015 years are as follows:

- FY 2013           \$ 271,999
- FY 2014           \$ 249,107
- FY 2015           \$ 222,225

The FY 2016 budget includes anticipated revenue of \$220,000.

**LEGAL REVIEW:**

The City Attorney has reviewed Proposed Ordinance No. 16-06.

**BOARD AND COMMITTEE ACTION:**

The Legal Committee recommended advertising Proposed Ordinance No. 16-06 at its meeting held on February 25, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of approval of Proposed Ordinance 16-06 as amended following public hearing on said proposed ordinance.

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**Attachments**

Proposed Ordinance 16-06 Cable ONe Franchise as Amended

Proposed Ordinance 16-06 Cable One Franchise

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## **PROPOSED ORDINANCE NO. 16-06 AS AMENDED**

**GRANTING A RENEWAL OF A CABLE FRANCHISE TO CABLE ONE, INC. ("CABLE ONE, INC") FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE SYSTEM IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE FRANCHISE AREA, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; ESTABLISHING THE TERMS AND CONDITIONS OF THE FRANCHISE; ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE FRANCHISE; REPEALING CITY ORDINANCE NUMBER 04-04**

**BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO:**

### **Section 1**

THE CITY COUNCIL HEREBY FINDS:

(A) CABLE ONE, INC. submitted a request pursuant to 47 U.S.C. §546 (h) for a renewal franchise to construct, upgrade, operate and repair a cable system in the City of ROSWELL and to provide Cable Service within the City.

(B) CABLE ONE, INC, and its predecessors in interest have operated a Cable System in the City of Roswell pursuant to the authority conferred by City Ordinance Numbers 995, 1057, 1116, 1184 and currently under City Ordinance Number 04-04.

(C) The Roswell City Council, having considered the interests proposed and advanced, has found that the grant of the renewal franchise requested, subject to conditions, is in the public interest.

(D) CABLE ONE, INC is willing to accept unconditionally the conditions of the renewal franchise grant as stated herein.

(E) The ROSWELL City Council held a public hearing on the proposed franchise renewal conditions on the 14<sup>th</sup> day of April, 2016, after providing legal notice of the hearing, as required by law.

(F) Pursuant to Section 3-42-1, et. seq., NMSA 1978, as amended from time to time, the City Council hereby grants a cable franchise renewal to CABLE ONE, INC as follows:

### **Section 2. DEFINITIONS.**

References to any City official or City office also refer to any official or office that succeeds to any or all of the responsibilities of the named official, whether by succession or otherwise. In addition, the following definitions shall apply:

ACCESS, PEG ACCESS, OR PEG USE. The availability of selected Cable System channels or open video system channels for non-commercial public, education or government use including institutional network use by various eligible agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a Franchisee's editorial control (except as required by applicable law) for which the Cable System will have no legal liability, including, but not limited to:

(1) **Public Access or Public Use.** Non-commercial access where organizations, groups, or individual members of the general public are the primary or designated programmers or users having editorial control over their programming.

(2) **Education Access or Education Use.** Non-commercial access where accredited schools are the primary or designated programmers or users having editorial control over their programming.

(3) **Government Access or Government Use.** Non-commercial access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming

**AFFILIATE.** A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with another person.

**CABLE MODEM SERVICE.** A two-way activated system that provides access to the internet and data transmission at speeds at least as great as 200 kilobits per second.

**CABLE ORDINANCE, ORDINANCE or FRANCHISE.** This ordinance and any amendments, exhibits or appendices hereto.

**CABLE SERVICE.** The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and the Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, but does not include telephony or internet services.

**CABLE SYSTEM.** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) a facility that serves Subscribers without using, or connecting to a facility that uses, any public Right-of-Way within the City;

(3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) any facilities of any electric utility used solely for operating its electric utility systems; or

(5) an OVS that is certified by the Federal Communications Commission (FCC).

**CITY.** The City of Roswell; except that, when used to describe a geographic area, the term refers to the boundaries of the City of Roswell, New Mexico, as they exist now or may exist in the future via annexation or consolidation.

**DESIGNATED ACCESS PROVIDER.** An eligible entity or entities designated by the City to manage some or all of the PEG channels, facilities and equipment.

**FRANCHISE AREA.** All parts of the City now existing or hereafter annexed.

**FRANCHISEE.** CABLE ONE, INC., and its lawful and permitted successors, assigns and transferees.



**GROSS REVENUE.** Gross Revenue shall mean and include: Any and all revenue of Franchisee, of any kind, nature or form derived from the operation of a Cable System to provide Cable Service. Gross Revenues shall be interpreted consistent with FCC regulations and rulings and include, by way of example and not limitation, revenues from equipment sales and rentals, services (including Cable Modem Services, if such services are determined by statute, the FCC, or the judiciary to be a Cable Service), installation, late fees and other Subscriber charges, advertising and shopping services. The term includes revenues that are received now, as well as new revenue sources from delivery of Cable Service that may develop in the future; but it does not extend to amounts received by Franchisee as a tax, fee (including franchise fee) or assessment of general applicability collected by Franchisee for pass-through to a governmental agency or reimbursement from third parties for expenses, nor to bad debt or to refunds or credits issued. The term shall be construed to include revenues of Franchisee's Affiliates (other than those revenues which are already treated as the revenues of the Franchisee upon which a fee is paid), only to the extent necessary to prevent avoidance of fees owed on Franchisee's Gross Revenues from the delivery of Cable Service. Cable System revenues shall be as defined by GAAP.

**PEG CHANNEL.** Any capacity on the cable system set aside by Franchisee for PEG (public, education, or government) use.

**PUBLIC RIGHTS OF WAY.** The surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, or right of way or easement dedicated to compatible uses, now or hereafter existing within the City which may be properly used for the purpose of installing, maintaining, and operating a Cable System; and any other property that Franchisee is entitled by state or federal law to use by virtue of the grant of this Franchise.

**STANDARD DROP.** An aerial connection extending no more than 150 feet from the potential subscriber's demarcation point to the nearest point of distribution on the cable system from which Cable Service can be provided to that subscriber.

**SUBSCRIBER.** The City or any person who lawfully is receiving Cable Service from a Franchisee and does not further distribute such service.

**SUBSCRIBER NETWORK.** The fibers, coaxial cables and the electronic devices and other components that are primarily used in the provision of Cable Service to residential subscribers.

### **Section 3. GRANT OF FRANCHISE; LIMITS AND RESERVATIONS.**

(A) Grant, term and effective date.

(1) A Cable Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Franchise. This Franchise grants the right, subject to conditions, to construct, upgrade, operate, maintain and repair a Cable System in, over, along and under City Rights-of-Way for the purpose of providing Cable Service and for PEG use of the Cable System, commencing on the effective date of the Franchise through and including January 1, 2026, unless terminated prior to that date in accordance with this Franchise or applicable law. This Franchise shall remain as a valid and enforceable agreement between the parties following the expiration date so long as both parties continue to abide by and honor the terms of this Franchise agreement.

(2) The grant shall become effective thirty (30) days after adoption of this Ordinance except as provided in Section 3(A)(3).

(3) The grant shall not become effective unless and until Franchisee has:

(a) Filed an unconditional acceptance of the grant made by this Ordinance substantially in the form in Exhibit A and;

(b) Made all payments, posted all securities and guarantees, and supplied all information that it is required to supply prior to or upon the effective date of the Franchise. If Franchisee fails to satisfy these obligations within thirty (30) days of the effective date of this Ordinance, the Franchise grant shall be deemed rescinded.

(B) Relation to other provisions of law.

(1) The Franchise issued by the City is subject to applicable federal and state law. References to laws or "applicable laws" in this Franchise include federal, state and local laws (and regulations lawfully adopted pursuant to those laws) now in effect, and to amended or new federal and state laws lawfully enacted. This Franchise does not confer rights upon the Franchisee other than as expressly provided herein, nor pass rights by implication except those that may otherwise vest pursuant to governing law. The Franchise does not convey title, equitable or legal, in the Public Rights-of-Way or public property. Franchisee shall not subdivide or sublease to any other person or affiliate any right granted to Franchisee herein, shall provide Cable Service complying with all the conditions of this Franchise throughout the Franchise term, and shall, subject to Franchisee's reasonable terms and conditions, make any Cable Service it provides over its Cable System available without unlawful discrimination to Subscribers in its Franchise Area.

(2) This Franchise and all rights granted under the Franchise are subject to the lawful and non-discriminatory exercise of the police powers the City now has or may later obtain, including but not limited to the power of eminent domain; and are further subject to the exercise of the City's rights as a property owner under state and federal laws. Except as expressly set forth herein, neither the granting of this Franchise or any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain, and the right to grant additional cable franchises. However, once effective, this Franchise is a contract and except as to those changes which are the result of the City's lawful and necessary exercise of police powers, neither party may take any unilateral action which changes the explicit mutual promises. This Franchise shall not be construed as any limitation upon the right of the City to grant to other persons or entities rights, privileges and authority similar to the rights, privileges and authority granted to Franchisee.

(3) The Franchise shall be interpreted to convey rights and interests only as to those City Rights-of-Way and easements in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise or available pursuant to governing law. The City acknowledges that the grant of access to the City Rights of Way is an essential element of consideration for this Franchise.

(4) The Franchise issued and the franchise fee paid hereunder are not in lieu of any other required generally applicable permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or the Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with any generally applicable codes, ordinances and regulations governing the construction of the cable system.

(C) Interpretation and conflicts. This Franchise authorizes only the provision of Cable Service. This Franchise does not eliminate any obligation of the Franchisee to obtain other authorizations as lawfully may be required. Nothing in this section is intended to expand or contract the City's rights to regulate non-cable services as those rights may exist under governing law.

(D) Affiliates must comply. Any Affiliate or joint venture or partner of the Franchisee involved in the management or operation of the Cable System in the City that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the franchise. The Franchisee shall be fully liable for any act or omission of an affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Franchise, as if the act or omission was the Franchisee's act or omission.

(E) Relation to prior franchise. As of the effective date of this Franchise, with the exception noted in the following sentence, the rights granted under Roswell City Ordinance No. ~~04-04~~ are superseded and of no further force and effect. Subject to any applicable statute of limitations, nothing in this paragraph shall be deemed to release the Franchisee from any liability arising under the prior franchise during the time it was in effect except that former rights applicable to such liabilities shall continue to apply. Franchisee shall provide proof satisfactory to the City that it will continue to provide the same or greater indemnity required under the prior franchise, and that it continues to maintain adequate insurance for injuries to persons or property that may have occurred during the prior franchise term.

(F) Validity. Both parties waive any claim or defense that any provision of this Franchise as it existed on the date the Franchise was signed, is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any other applicable law.

(G) Effect of franchise acceptance. By accepting this renewal Franchise, the Franchisee:

- (1) Acknowledges and accepts the City's legal right to issue and enforce the Franchise;
- (2) Accepts and agrees to comply with each and every provision of this Franchise;
- (3) Agrees that it will not oppose intervention in any legal action that directly affects the City's rights under the Franchise;
- (4) Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(H) Franchisee bears its own costs. Unless otherwise expressly provided in this Franchise all acts that the Franchisee is required to perform under this Franchise shall be performed at its own expense. This provision is not intended to limit any right the Franchisee may have to pass through to Subscribers or other third parties Franchise related or other costs incurred in exercising rights and obligations under this Franchise.

(I) No waiver.

(1) The failure of either party, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing; no course of dealing between a Franchisee and the City shall operate as a waiver of any such rights.

(2) A waiver of one right shall not be deemed a waiver of any other right, similar or dissimilar.

(J) No recourse. Without limiting such immunities as the City or other persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Franchise or because of the enforcement of this Franchise or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(K) Effect of change in law. In the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this franchise, then the provision shall be read to be preempted or limited to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt or limit such provision. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted or limited is no longer so affected, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the affected party.

#### **Section 4. TRANSFERS.**

(A) No transfer without City approval. Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust. No transfer may occur without the prior consent of the City. The City need not consider an application for a transfer until Franchisee has filed all information required under applicable law.

(B) No transfer of a Franchise, Franchisee, or Cable System or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to City and City's prior written consent is obtained, pursuant to this Section of the Franchise, and only then upon such terms and conditions, pursuant to law, the City reasonably deems necessary and proper to protect the public interest. City will not unreasonably withhold consent to a requested transfer. Transfer applications shall be deemed to be held in trust, and to be personal to the Franchisee. Any transfer that is made without the prior approval of City shall be without affect. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer. An application for a transfer must be submitted at least 120 days prior to the date the transaction is scheduled to be consummated. If the City does not act upon an application for transfer within 120 days, it shall be deemed approved.

(C) A change of control of the Franchise, Franchisee, or Cable System shall be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a twenty five percent (25%) ownership in the Franchisee or its direct or indirect parents by any person, or a group of persons acting in concert who did not prior to the time of such change, acquisition or transfer already own twenty five percent (25%) or greater ownership interest in the Franchisee or the direct or indirect parent, except where such change, acquisition or transfer involves only limited partner interests. Without limiting the above, any change in the majority of the general partners of Franchisee (if any) will be presumed a change in control. A transfer also occurs whenever there is a change in actual working control (but not including non-ownership management), in whatever manner exercised, over the affairs of a Franchisee or its direct parents. For purposes of clarification,

administrative restructurings that do not involve the introduction of new management would not be considered a change of control (e.g. a new holding company with the same shareholders or a change in reporting structure within the same parent organization).

## **Section 5. FRANCHISE FEE.**

(A) Payment to City. The Franchisee shall pay the City a franchise fee in an amount equal to five percent (5%) of Gross Revenues.

(B) GAAP (General Acceptable Accounting Principles) applies. Records of Cable System revenues and expenses shall be kept in accordance with GAAP.

(C) Not in lieu of any other assessments, tax or fee. The franchise fee is in addition to all other generally applicable fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law, except as required by 47 U.S.C. § 542.

(D) Payments. Franchise fees shall be paid quarterly commencing thirty days after the end of each calendar quarter. Payments shall be accompanied by a statement that provides the City with a reasonable level of detail identifying the sources of income from which gross revenue is calculated, the number of subscribers for the period, and such other information as the City may reasonably request be included.

(E) No accord or satisfaction. In accordance with the appropriate statute of limitations, no acceptance of any payment by the City required by this Franchise shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Franchisee.

(F) Payment records. The City may, from time to time, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and franchise fees have been accurately computed and paid. The Franchisee agrees to produce all financial records necessary for the City to review in the City of Roswell. In addition to paying all fees owed plus interest equal to 3% above the rate for the three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the payment, in the event that the City reviews the Franchisee's franchise fee payments, and finds that the Franchisee has underpaid the fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually paid or ten thousand dollars (\$10,000), whichever is less, Franchisee shall pay the reasonable cost of the City's review. The City agrees not to audit more than once every two years, but must audit at least once every three years.

(G) Consumer disclosure. The amount of a subscriber's total bill assessed as a franchise fee may be listed as a separate line item.

## **Section 6. EXERCISE OF RIGHTS UNDER A FRANCHISE – MINIMUM CONDITIONS ON USE OF PROPERTY; CONSTRUCTION.**

(A) City use of facilities. Subject to meeting the requirements of National Electrical Safety Code of the American Insurance Association and all applicable state and local laws and rules, the City shall have the right at its own expense to install and maintain free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not interfere with the Cable Service

operations of the Franchisee.

(B) Joint use. Upon request by the City and to the extent the Franchisee legally can do so, pursuant to its leases and agreements with other persons using the Right-of-Way, the Franchisee will grant joint use of easements or private Rights-of-way which it now, or in the future, has an interest in, to the City for purposes, including but not limited to parks, drainage facilities, bikeways, traffic conduits, mass transit corridors, sanitary sewer lines, pedestrian area parking, open spaces, and electric, natural gas, and water service distribution, provided that the Franchisee shall not be required to make such an offer in any circumstance where such offer would interfere with the Franchisee's use of the easements or private Rights-of-Way or in any instance where the City would provide Cable Service. If the City's joint use is accepted by the Franchisee, then any fees Franchisee is required to make for the joint use shall be paid by the City and any improvements deemed appropriate by the City shall be made by the City at its sole expense.

(C) Budgeting. To facilitate the City's annual budget process, on or before the 1st of November and each succeeding 1st of November thereafter during the term of any Franchise granted under this Article, the Franchisee will provide the City, upon City's request, with an estimate of the Gross Revenue and resultant franchise fee for the following calendar year. The estimated Gross Revenues and resultant franchise fees are not a guarantee and shall not create a duty or obligation on the part of the Franchisee to meet Gross Revenue estimates or remit any estimated franchise fee amounts.

(D) All work subject to City laws and regulations. The construction, operation, and repair of Cable System shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. Persons engaged in the construction, operation, or repair of the Cable System shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

(E) Permits. Construction, operation, or repair of the Cable System shall not commence until all required permits have been obtained from the proper City officials and all required permit fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. City will not unreasonably withhold granting of permits. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable time line set forth by the City, unless Franchisee receives the necessary permits and approvals and/or corrects the non-compliant work or construction. To the extent generally required of others for construction within the City, Franchisee shall reimburse the City for costs incurred in inspecting construction undertaken in the course of major upgrades and/or installation of fiber optics.

(F) Safety codes. Without limiting the foregoing, the installation of the Cable System shall be in accordance with the relevant requirements of the National Electrical Safety Code of the American Insurance Association (successor to National Board of Fire Underwriters) and all applicable laws, ordinances, rules, regulations of the state and of the City affecting electrical installations and buildings in effect at the time of such installation. All structures and all lines, equipment, and connections in, over, under, and upon the streets shall at all times be kept and maintained in a safe,

suitable, substantial condition, and in good order and repair.

(G) Maps. Franchisee shall file maps and/or drawings showing the location of any construction or extension of its facilities and services in any Public Rights-of-Way of the City. For multi-conduit duct banks, maps and drawings shall show overall size, material, and configuration of the duct bank.

(H) Installations, excavations, and restorations. The City shall have the right to regulate the time, manner and location of facilities in the Public Rights-of-Way. Without limiting the foregoing, the City may require Franchisee, where unreasonable delay in Franchisee's work will not result, to coordinate its work with work performed by others in the Public Rights-of-Way so that interference with the use of the Public Rights-of-Way by others, including others that may be installing cable systems, may be minimized. The City may require a person using the Public Rights-of-Way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the Public Rights-of-Way, subject to Franchisee's right to not be unduly delayed in its emergency or planned work. The Franchisee shall have the right to excavate in, occupy, and use all Public Rights-of-Way and easements dedicated for compatible uses for the purpose of installing, erecting, constructing, repairing, maintaining, removing, relocating, and operating the Cable System after obtaining any and all appropriate permits from the City, provided, however, that:

(1) The Franchisee shall not place any of its facilities on, over, under, or within any City park, duly designated as such by the City without first having obtained the written permission of the City;

(2) The Franchisee shall not place any of its facilities on, over, or within the median portion of any boulevard or parkway, except for perpendicular crossings, without first having obtained the written permission of the City;

(3) No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property involved;

(4) The City reserves the right to determine the location of work in the Right-of-Way. The City shall not unreasonably withhold or restrict Franchisee's access to Rights-of-Way; and,

(5) Franchisee shall endeavor to employ trenchless technology in the placement of its facilities where technically and financially appropriate.

(I) Work involving excavations; notice. Except in an emergency, prior to the commencement of any work by the Franchisee which involves excavation in any Public Rights-of-Way, the Franchisee shall notify the City, and shall pay any generally applicable fees.

(J) Clean-up and restoration. After any excavation shall be made and after work is completed, the Franchisee, at Franchisee's expense, shall as soon as practicable but not longer than two days, weather permitting, remove all surplus material, and restore the portion of the Public Rights-of-Way to a condition that reasonably meets or exceeds the pre-excavation condition of such Rights-of-Way, subject to inspection by the City. Any other affected public or private property shall be restored to a condition reasonably as good as that which existed prior to the work. If the Franchisee fails to restore promptly the affected property, including reseeding, then following written notice to Franchisee, and reasonable opportunity to cure, the City may make the restoration in a manner satisfactory to City, and all costs incurred for such restoration, whether done with City work forces and equipment or otherwise shall be paid by the Franchisee, including the cost of any inspectors the City may assign to the project.

(K) Maintaining facilities in good condition. The Franchisee shall be responsible for the maintenance of its own equipment, facilities, and appurtenances placed upon, over, or under the public Right-of-Way, including the removal of all graffiti from Franchisee's property. If five (5) days after notice from the City such graffiti has not been removed, it will be removed by the City at Franchisee's sole cost.

(L) Persons with disabilities. The Franchisee shall ensure its public facilities in Public Rights-of-Way are located and constructed in a manner consistent with any requirements of the Americans with Disabilities Act (ADA) applicable at the time of construction. Following notice by the City of an ADA construction problem, the Franchisee shall have 30 days or other reasonable time to remedy the problem, subject to Franchisee's right to contest the alleged ADA violation.

(M) Utility coordinating committee. Execution of any Franchise requires the Franchisee to participate with a local utility coordinating committee, or a Franchisee may provide a similar service pursuant to a Franchise, which service would be governed by state law. If the Franchisee elects to become a member of the local utility coordinating committee, the Franchisee further agrees to participate in such organization(s) and abide by their articles of incorporation, by laws, and other requirements.

(N) Use of existing poles and conduit. Franchisee shall use existing poles and conduit wherever appropriate. Additional poles may not be installed in the Right-of-Way without the permission of the City. While it is the policy of the City to minimize the increase of any above ground utilities, no undergrounding shall be required solely because of the Franchisee's status as a Cable System, nor where other existing utility facilities are above ground.

(O) Publicizing proposed construction work.

(1) Franchisee will publicize the initial build or any substantial rebuild or upgrade of its Cable System cable in each affected neighborhood at least one week before commencing that work by providing written notice to the City and by notifying those persons whose property is within 300 feet of the work in at least two of the following ways:

- (a) Telephone;
- (b) In person;
- (c) By mail;
- (d) By distributing flyers to residences; or
- (e) By publication in local newspapers or by television public service announcement.

(2) Apart from any initial build or substantial rebuild or upgrade, any construction will be publicized in accordance with applicable notice requirements.

(3) Before entering onto any person's property, Franchisee will contact the property owner or, in the case of residential property, the resident in the manner described in this section. If Franchisee must enter a residence or building, it must schedule a mutually convenient appointment with the owner or resident. No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property involved.

(4) For the purposes of this section, the term "substantial rebuild or upgrade" means the planned replacement or addition of trunk or distribution cable (but not drops) affecting:



- (a) More than 10% of the Cable System Subscribers; or
- (b) Involving more than 20 miles of plant.

(5) During the period of any Cable System cable initial build or rebuild, Franchisee will maintain a file open for public inspection showing its timetable for constructing the Cable System cable by area of the City.

(P) System Maintenance. Scheduled maintenance will be performed to minimize the effect of any necessary interruptions of Cable Service.

(Q) Relocation.

(1) Franchisee shall, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the City by reason of traffic conditions; public safety; public Right-of-Way construction and repair (including re-grading, resurfacing or widening); public Right-of-Way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement. Collectively, such matters are referred to below as the "public work." If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(2) The City or agent shall provide written notice describing where the public work is to be performed at least two weeks prior to the deadline by which Franchisee must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency or where a Cable System creates or is contributing to an imminent danger to health, safety, or property (and in which case without prior notice), or where the Franchisee has failed, after the notice provide above, to protect, support, temporarily disconnect, relocate or remove its facilities, the City may protect, support, temporarily disconnect, remove, or relocate any necessary parts of the Cable System and charge Franchisee for costs incurred.

(3) Upon written notice of need, Franchisee shall use reasonable good faith efforts to accommodate the construction, operation or repair of the facilities of another person authorized to use the Public Rights-of-Way or public property. A person seeking accommodation shall provide Franchisee reasonable notice, but, except in case of emergency, not less than 30 days prior to the time the accommodation work is to be completed. Such person shall have responsibility for any and all costs associated with Franchisee's efforts to protect, support, temporarily disconnect, relocate or remove its facilities to accommodate the requesting person.

(4) Nothing herein shall be construed to reduce or otherwise affect any right the City or Franchisee has to recover, seek contribution for, or to offset the costs of complying with the requirements of this provision.

(R) Undergrounding. Franchisee shall locate or relocate its facilities underground:

(1) During construction in any area where all existing electric and telephone utilities are located underground or in an area where all electric or telephone utilities are required to be relocated underground; and

(2) In any area where all owners of poles locate or relocate facilities underground,

concurrently with the placement of the pole owner's facilities underground. Location or relocation underground according to this provision shall be without direct cost to the City. If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(S) Public works and improvements.

(1) Whenever the City shall excavate or perform any work in any present and/or future Public Rights-of-Way of the City, or shall contract, for such excavation or work, where such excavation or work may disturb but not require removal or relocation of Franchisee's facilities, the City shall notify the Franchisee sufficiently in advance of such contemplated excavation or work to enable the Franchisee to take such measures as may be deemed necessary to protect and support such facilities from damage or injury to the public or the City's Public Rights-of-Way. If the Franchisee cannot take such measures, the Franchisee may be required to relocate its facilities in accordance with this Article. In such case, the Franchisee upon request shall furnish field markings to the City or contractor, as the case may be, showing the location of all its facilities in the area involved in such proposed excavation or other work.

(2) Whenever Franchisee shall excavate or perform any work in any present and/or future Public Rights-of-Way of the City, or shall contract, for such excavation or work, where such excavation or work may disturb but not require removal or relocation of City's facilities, Franchisee shall notify the City sufficiently in advance of such contemplated excavation or work to enable City to take such measures as may be deemed necessary to protect and support such facilities from damage and possible inconvenience or injury to the public or City's Public Rights-of-Way. If the City's facilities are not clearly marked, the City will notify Franchisee and provide field markers or locaters for their facilities.

(3) Nothing herein shall be construed to reduce or otherwise affect any right Franchisee has to recover (from a party other than the City), seek contribution for or to offset the costs of complying with the requirements of this provision. If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(T) Moving of buildings. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery, or other object, the Franchisee shall perform such rearrangement upon receipt of payment for the estimated costs incurred by the Franchisee in making such rearrangements, and provided that Franchisee received written notice at least 30 days in advance from the person or persons desiring to move said building, machinery, or other objects. The written notice shall detail the route of movement of the building, machinery, or other object. The costs incurred by the Franchisee in making such rearrangements of its aerial plant will be borne by the person or persons seeking such rearrangement, unless the aerial plant is placed or maintained in violation of the applicable rules of any local, state, or federal regulatory agency and thereby unlawfully interferes

with the movement.

(U) Interference and Review of City Project Plans. Upon submittal by the City of City construction plans, the Franchisee will review and identify locations of cables and/or conflicts within two weeks of request. The City may require co-location in common trenches where appropriate.

(V) Restoration of property. The Franchisee shall reconstruct, replace, or restore to its previous condition in a timely fashion that portion of any street, alley, or public way or place; and any water, sewer, sanitary sewer, storm drainage, traffic signalization or other facility of the City, disturbed or damaged by the Franchisee, to a condition reasonably acceptable to the City consistent with reasonable standards of safety and appearance as required by generally applicable law and codes adopted pursuant to exercise of the City's police powers.

(W) Supplying maps. Franchisee shall maintain on file all available maps, operational data, and reports pertaining to its operations in the City. The City may inspect the maps, data, and reports at any time during business hours. Upon request of the City, the Franchisee shall furnish to the City, as soon as practicable without charge, current maps showing the location and dimension of any facilities within the Franchise Area. Franchisee supplying maps under this provision may excise proprietary information so long as the location and dimension of any facilities, and their character (e.g. pole, equipment cabinet, fiber optic cable, power line) are clearly shown.

(X) Conditions of sale.

(1) If a renewal of a Franchise held by Franchisee is denied and the City acquires ownership of a Franchisee's Cable System, or effects a transfer of ownership of the system to another person, the valuation of any such acquisition or transfer shall be in accordance with 47 U.S.C. §547(a).

(2) If a Franchise held by Franchisee is revoked for cause and the City acquires ownership of the Cable System or effects a transfer of ownership of the system to another person, the valuation of any such acquisition or transfer shall be in accordance with 47 U.S.C. §547(b).

(Y) Utility contracts. Within 30 days of Franchisee contracting with another utility provider to use any property or facilities of Franchisee located in the Right-of-Way, Franchisee agrees to notify the City of such contract and identify the provider.

(Z) Failure to perform. If Franchisee should fail to perform any work required under this Section after written notice and reasonable opportunity to cure, the City may cause work to be performed, and may bill the Franchisee therefore, or draw upon any security fund or bond to recover its costs. If the City bills the Franchisee, the Franchisee shall pay the amount billed within 30 days of receipt of the bill.

## **Section 7. CONSTRUCTION PROVISIONS.**

(A) General system design.

(1) Equipment and facilities shall be maintained so that the subscriber network is capable of transporting at least fifty-four (54) analog and / or digital channels.

(2) Franchisee shall install and maintain facilities and equipment that permit and are capable of meeting FCC standards for passing through the program related television video and audio signals received at the headend without substantial alteration or deterioration (thus, for example, the system will include components such that a signal received at the headend in color may be received by a subscriber in color, and a stereo signal in stereo). Without limiting the foregoing, facilities and

equipment shall be installed and operated so that subscribers can receive closed captioning and secondary audio in accordance with federal law and regulation. Franchisee, except as applicable FCC regulations may prohibit, may affect vertical blanking intervals in transmissions.

(3) Franchisee shall comply with applicable federal laws concerning system compatibility with subscribers' consumer electronics equipment. Franchisee shall comply with all applicable laws concerning disabled access to its services.

(4) Franchisee shall deliver maps or drawings to the City showing the location of its trunk and distribution lines and other major facilities located in the rights of way. The maps need not reflect all electronic components and may exclude any sensitive commercial information.

(5) Construction standards. Franchisee will comply with all lawful and generally applicable construction standards utilized by the City.

(a) The construction, operation, and repair of the Cable System will be in accord with all applicable law. At a minimum, all construction by Franchisee done by Franchisee after the effective date of this Franchise shall comply with the Manual of Construction Procedures most recently submitted; IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law). The construction, operation, and maintenance of the cable system shall be performed by experienced and properly trained properly and licensed maintenance and construction personnel.

(B) Standards following completion of upgrade. Upon completion of any cable system upgrade, the Cable System shall:

(1) Utilize facilities and equipment generally comparable to that used in other high-quality, reliable cable systems of similar design, including commercially reasonable backup power resources. The Cable System shall have the level of reliability required to support a high-quality, broadband information service;

(2) Be two-way activated and shall include the facilities and equipment (except customer premises equipment) required to support broadband interactive services, such as Internet services.

(3) Provide reliable service and possess auto-start back-up power at the headend and elsewhere reasonably necessary (consistent with accepted industry standards and the system design) to avoid or minimize service interruptions. Back up power supplies at critical points in the distribution system shall be capable of carrying their individual loads for a minimum of two (2) hours. Franchisee shall be able to identify power outages affecting the Cable System and when and where the Cable System has switched to back-up power supplies.

**Section 8. PRESERVATION OF BENEFITS AND STATUS QUO.** As of the effective date of the franchise, Franchisee was providing one (1) channel to subscribers for PEG use. It will continue to provide that channel for PEG and/or I NET use, continue the current personnel support and continue to maintain the wiring that connects the City's studio to Franchisee's headend. The City will continue to manage its equipment and facilities

## **Section 9. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

(A) Support equipment and facilities.

(1) Franchisee must have sufficient equipment and facilities and the trained and skilled personnel required so that Franchisee complies with each and every requirement of applicable law, including applicable customer service requirements, technical standards, maintenance standards and requirements for responding to system outages. This includes the facilities, equipment and staff required to:

(a) Properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and

(b) Be able to quickly respond to customer complaints and resolve system problems.

(2) Franchisee must ensure that its headend has adequate space and is otherwise properly designed in order to accommodate the equipment and facilities necessary to meet its obligations under the franchise.

(B) Technical standards. The cable system must meet or exceed the technical performance standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, provided that, nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.

(C) Future upgrades. It is Franchisee's responsibility to make such commercially practicable improvements to its Cable System throughout the Franchise term to ensure that Subscribers are able to obtain advanced Cable Service, and so that services can be added throughout the franchise term.

(D) Tests during construction.

(1) Franchisee shall conduct acceptance tests on each newly constructed or upgraded segment prior to subscriber connection or activation.

(2) Franchisee shall test random samples of components before installation.

(3) Franchisee shall prepare reports sufficient to show the testing required in Sections 8(D) - 8(G) have been completed.

(E) Inspection and testing. The City shall have the right to inspect the Cable System during and after the upgrade to ensure compliance with this franchise, and applicable provisions of local, state and federal law. The City:

(1) May require the Franchisee to perform tests based on the City's investigation of Cable System performance or on subscriber complaints; and

(2) May require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under applicable law.

(F) System maintenance.

(1) Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected Subscriber's service problems, only after a minimum of forty-eight (48) hours' prior notice to Subscribers and the City of the anticipated service interruption; provided, however, that there shall be no minimum prior notice period, for planned maintenance that:

(a) Does not require more than two (2) hours' interruption of service; and

(b) Occurs between the hours of 1:00 a.m. and 6:00 a.m.

(G) FCC-mandated testing. Franchisee shall notify the City in advance of conducting any

proof-of-performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results and any supporting documentation regarding the tests and testing equipment and procedures.

(H) Emergency alert system. Franchisee must install and maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert to all subscribers in the City. The system must be designed and maintained so that local officials designated by the City can activate the system remotely without the assistance of Franchisee, using a telephone and secure password or by such other technical means as the City may approve. The system must be designed and maintained so that the designated officials, from a touch-tone telephone, can activate a pre-recorded text message, and at such officials' option, an accompanying live audio voice message for up to two (2) minutes. The system must be designed so that emergency messages may be sent only to subscribers in the City of Roswell. The City and the Franchisee shall meet periodically to discuss operational procedures for use of the emergency alert system. As part of those discussions, the parties may agree on alternative capabilities and activation procedures for the emergency alert system. Subject to the foregoing, the emergency alert system should be integrated to the extent reasonably possible with other emergency alert systems the Franchisee is required to provide under federal or state law. The City acknowledges that it will not be able to override national or state alerts.

(I) Parental controls. In addition to satisfying any obligations that it has under applicable law to provide parental control devices, or otherwise block programming on the cable system, Franchisee shall ensure that any system for ordering movies or other pay-per-view programming is designed, through use of systems such as PIN number systems, to prevent children from ordering programming without parental consent.

## **Section 10. INTERCONNECTIONS**

(A) Generally. The Cable System's existing facilities and equipment, and future design changes, must be installed and managed to provide interconnections with all other cable systems and open video systems in the City, as necessary to permit the seamless exchange of any I NET and/or PEG communication whether video, data or voice across networks, subject to limitations on uses under Section 9. The City may require Franchisee to interconnect with other open video and cable systems in the City, and in communities adjoining to the City where the City determines that the interconnection of I NET or PEG access is necessary and Franchisee must interconnect on its own initiative as necessary to satisfy its PEG obligations in a timely manner. Unless otherwise permitted by the City, all interconnections shall be bi-directionally activated fiber links.

(B) Relief from Obligations. Franchisee may obtain relief from an interconnection requirement where Franchisee shows to the satisfaction of the City that it is technically infeasible to perform, and where the Franchisee proposes a reasonable alternative, in light of the purposes to be served by the interconnection. Franchisee may also obtain relief from the interconnection requirement where the interconnection requires a contract between the Franchisee and a third party (an affiliate of Franchisee is not a third party), and the third party and Franchisee are unable to agree upon interconnection terms. In such a case, Franchisee must promptly notify the City that it has been unable to reach an interconnection agreement; must present the interconnection agreement that it proposed and any proposal by the third party; and must explain the reasons why the parties have been unable to reach

agreement. The City will then assist in negotiations with the other cable system or open video system provider in securing an arrangement acceptable to Franchisee.

## **Section 11. SUBSCRIBER NETWORK CHANNELS AND FACILITIES FOR PEG USE.**

(A) Generally. During the Franchise term, Franchisee shall provide PEG Channels on the lowest level of service made available to any subscriber; alternatively, if program choices are selected by a menu, PEG programming choices must be displayed equally as prominently as commercial programming choices offered by Franchisee if the Franchisee has editorial control over the menu. It is the responsibility of the PEG channel operators to timely provide in the appropriate format information that it wishes to have displayed on the menu.

(B) Management and Allocation of Channels. The City may designate Designated Access Providers; Franchisee may designate Channels provided under Section 10 for Public, Education, Government or combined PEG use. Nothing herein shall prevent the Designated Access Provider from allowing PEG capacity designated for a particular PEG use to be used for other PEG purposes.

(C) Analog/Digital Channels.

(1) Franchisee agrees to provide up to three PEG Channels for the City's use in whatever combination of Public Access, Educational and Governmental use the City determines best. The City may allocate programming from all three categories of PEG in a single Channel at its discretion. Though there is no timeline for delivering Channels, the City agrees that it will not request a second PEG Channel until the first Channel is unable to accommodate additional new programming. The third Channel will be allocated in the same manner.

(2) The Channels must be capable of supporting the transmission of a standard video signal of a quality comparable to commercial signals carried on the Subscriber Network in the same format. Franchisee must carry the entire PEG signal (except for any vertical blanking interval) and deliver it to the Subscriber so that it is viewable by all Subscribers, whether they receive digital, or analog service, or a combination, without the need for any equipment other than that the Subscriber requires to receive the level of Cable Service it has chosen..

(3) When the lowest level of Cable Service is delivered in digital format, which Franchisee estimates will begin on May 2, 2016, Franchisee's obligation to provide any PEG channels on its analog lineup shall end, and the PEG channels at that time being delivered in analog format will be replaced by an equal number of digital channels.

Franchisee shall not be required to supply digital decoders to any Subscriber not otherwise authorized to receive digital service from Franchisee.

(4) Conversion to Digital. The cost of the equipment required to provide a digital PEG signal feed, and to compress the digital PEG signals to deliver them to Subscribers, will be borne by the ~~City~~ Franchisee if the City opts to enable the City to use digital PEG Channels before all other basic service programming is delivered in a digital format. In this instance, the City will also be responsible for digital compression costs. Such equipment shall be purchased, installed and operational for the current PEG channel within 30 days of the acceptance of this Franchise by Franchisee, unless an extension has been agreed to by the City. It may implement any digital compression ratio compatible with the technical requirements of Franchisee's Cable System. The City shall take no action causing Franchisee to be unable to satisfy the performance requirements specified by the Franchise.

(5) Description of Digital PEG Channels. Each digital PEG Channel must be capable of transmitting at the compression ratio comparable to that used for delivery to Subscribers of the majority of Franchisee's video programming services transmitted using digital compression. Nothing herein shall prevent the parties from agreeing to a different compression ratio. Each digital PEG Channel must be capable of transmitting a compressed video programming signal. The City can use each Channel to deliver two separate signals, one single signal, or any combination of signals.

(E) Limitations on Use. PEG channels shall not be used to cablecast commercial programming, paid advertising, or promotional material unrelated to the specific programming purpose. PEG Channels may not be leased or assigned to third parties. The parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast (e.g., PBS) station, or to prevent Schools from charging course fees, and then delivering the course via the PEG Channels; or to solicit financial support for the provision of PEG Access by Designated Providers and for charitable, educational or governmental purposes.

(F) Transmission Quality of PEG Channels. Franchisee shall ensure that the transmission quality for each PEG Channel delivered over the Subscriber Network will meet or exceed applicable FCC signal quality requirements, provided that interference and distortion are prevented and that the level of quality is equal to that the Cable System's commercial channels but in no case better than the quality of the signal delivered to the Cable System by the PEG operators.

(G) Upstream Capacity for PEG Use.

(1) Franchisee shall provide and maintain an activated dedicated bi-directional, fiber-optic link between its headend and a PEG Access Center Studio at a location to be designated by the City. Franchisee shall provide at least the amount of activated capacity on the link so that the Studio can program each activated Access channel on the Subscriber Network and the additional PEG Use channels simultaneously by sending a feed to the headend that Franchisee can connect to the appropriate Access Channel or to the interconnect. Franchisee will be responsible for placing the signals sent onto the proper Access Channel or interconnect. However, the City agrees that such PEG Access Center Studio shall be within 1 aerial mile of Franchisee's headend.

(2) Franchisee will also provide sufficient fiber capacity from the PEG Access Center Studio to City Hall. The City agrees that such PEG Access Centers shall be within 2500 feet of City Hall.

(3) The City may add equipment necessary so that it can transmit more signals to and from the I-Net. However, the cost of this additional equipment is the City's responsibility.

(4) If the headend is moved or replaced, Franchisee shall transfer the fiber-optic link(s) to the new location (including, without limitation, moving terminal equipment and splicing fiber, as necessary).

(H) Cable outlets for educational and government facilities.

(1) Franchisee shall, without charge, and except where limited herein, provide upon request the following to non-residential, Title I funded RISD school buildings, non-residential City municipal government buildings and a PEG Access Studio within Franchisee's Franchise Area not requiring a line extension or a drop in excess of 125 feet:

(a) One (1) activated subscriber network service drop and outlet;

(b) Basic Cable Service and the channels on the most widely subscribed to satellite tier



offered on the Cable System (except where programming related contracts preclude it) to the outlet provided above in (a);

(c) Cable modem service to each public library operated by the City (if and when cable modem service is provided by Franchisee in that locale) and City Hall, if requested by the City. Franchisee shall prepare a plan to provide discounted cable modem service to any other City municipal government building designated by the City during the term of this Franchise; and,

(d) The terminal equipment necessary to receive the services listed in subparagraphs (a)-(c) at the outlets provided ~~above~~ in subparagraphs (a) and (e). Franchisee shall provide two units of terminal equipment for each location, and may charge a fee for additional units at each location at the same rate as paid by other Subscribers for additional units.

(e) As of the effective date of this Franchise Agreement, the following City facilities will be provided with network service drops and outlets and receive service under subparagraph (b) above, together with terminal equipment described in subparagraph (d) as requested by the City:

- (1) Each of the seven (7) fire stations
- (2) Roswell International Air Center Terminal Building
- (3) Roswell Museum and Art Center
- (4) Roswell Public Library
- (5) Roswell Adult Center
- (6) City Hall at 425 N. Richardson Avenue
- (7) City Hall Annex at 415 N. Richardson Avenue
- (8) Roswell Police Department

(2) The City or school may itself extend video service lines from the Franchise provided drop to additional City or school outlets within the same building, but service will not be provided to any residential quarters, with the exception of City fire stations. Franchisee shall not be responsible for signal leakage or the signal quality at any additional outlet. Franchisee also will install such wiring upon request, at its regular hourly service charge for labor and costs of materials. Franchisee is responsible for delivering the services provided for in (1)(b) above, within applicable FCC signal quality standards, to Franchisee's installed outlet at the location. However, Franchisee is not responsible for signal quality or leakage at any outlet beyond that which it installs pursuant to (1)(a) above, and may, after reasonable notice to repair, discontinue service at a location until such time as a repair is made that cures such signal quality or leakage. If a location adds multiple outlets, it is responsible and must pay for any additional equipment and facilities required to make them operational.

(3) The City shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchisee shall not be required to provide an outlet to any buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installation.

## **Section 12. OPERATION AND REPORTING PROVISIONS.**

(A) Right to inspect and copy. The City shall have the right to inspect and copy books and records: related in whole or in part to the construction, operation or repair of the Cable System and reasonably necessary for the City to monitor compliance with the terms of this Ordinance or applicable law; or reasonably necessary to the exercise of any right or duty of the City under the same. Franchisee is responsible for maintaining control over books and records related in whole or in part to the construction, operation, or repair of the Cable System. It is responsible for producing these records within its care, custody or control upon the City's request for the City's inspection within the City limits of the City. The records that Franchisee must produce shall include, but are not limited to records used to compute Franchise fees, and other records related to compliance with any provision of this Franchise. However, nothing herein gives the City the right to inspect or copy Franchisee's confidential financial and/or proprietary information nor access to Franchisee's electronic data systems. Books and records must be maintained for a period of three years, except that Franchisee may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The City agrees it will not audit more than once every two years.

(B) Reports. Any report required hereunder may be prepared in a manner consistent with the Franchisee's regular records at the level where normally kept.

(1) The City Manager may from time to time (but not more often than once per year) direct Franchisee to prepare reports reasonably necessary to the City's monitoring compliance with the terms of this Franchise or applicable law and to submit those reports by a date certain, allowing reasonable time for preparation, in addition to those otherwise required.

(2) Within 30 days of a request by the City Manager, but not more than two times per year, Franchisee shall submit a report to the City containing the following information:

(a) The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the Subscriber base; and

(b) The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on at least three signals, affecting five or more Subscribers.

(3) Unless an exemption is granted by the City Manager, no later than 90 days after the end of its fiscal year, Franchisee shall submit the following information, except that the information required by Section 12(C)(3), below, need only be provided where there has been a change from the preceding year:

(a) An audited or certified revenue report from the previous calendar year for the Cable System, and a certified statement setting forth the computation of Gross Revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) Gross Revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from Gross Revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.

(b) A report showing, for each applicable customer service standard, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each

case where Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the written customer service complaints received and an explanation of their dispositions.

(c) An ownership report, indicating all persons who at the time of filing control or own an interest in the Franchisee of 10% or more.

(4) Within 10 days of their receipt or (in the case of documents created by the Franchisee or a person acting on its behalf) filing, Franchisee shall provide the City:

(a) Notices of deficiency or forfeiture related to the operation of the Cable System;

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly; and

(c) Copies of all petitions, applications and communications in respect to any matters affecting the Cable System submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction.

(C) Other Records Required. Unless the City Manager specifically waives the requirement in writing, Franchisee shall at all times maintain:

(1) Records of all written complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the Franchisee's construction, operations or repair activities;

(2) Records of outages known to the Franchisee, their cause and duration;

(3) Records of service calls for repair and maintenance indicating the nature of the call for service, the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;

(4) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;

(5) Records sufficient to show whether the Franchisee has complied with each FCC customer service standard that applies to it.

(D) Exemptions. The City Manager may exempt Franchisee from its obligations under Section (C) if the City reasonably determines that the requirement would be unduly burdensome or unnecessary, and that City and Subscriber interests may be adequately protected in some other manner.

(E) Uses of system. Without limiting the foregoing, upon request, Franchisee must advise the City of all services it provides via the Cable System at least thirty (30) days prior to offering such services (the term "services" for purposes of this Section, would include, without limitation, the provision of dark fiber for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System).

(F) Retention of records; relation to privacy rights. Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under applicable law or this Franchise, including by providing appropriate subscriber privacy notices. Nothing in this Section shall be read to require Franchisee to

violate 47 U.S.C. § 551 or other applicable law governing privacy. Franchisee shall be responsible for redacting any data that state or federal law prevents it from providing to the City. Records shall be kept for at least five (5) years, except that service call logs may be retained for three (3) years, so long as the information contained therein is reflected in other documents.

**Section 13. CUSTOMER SERVICE STANDARDS.** Franchisee shall meet or exceed the cable television customer service standards adopted by the state (if any) or the FCC.

**Section 14. RATE REGULATION.** Upon certification by the Federal Communications Commission, the City may regulate Franchisee's rates and charges related to its lowest level of service, and order refunds of unreasonable rates charged, to the extent that it is permitted by applicable law. All rates that are regulated by the City must be reasonable and, except as applicable law provides otherwise, can only be established or changed with the prior approval of the City. Failure of the Franchisee to comply with valid rate orders issued by the City shall constitute a material breach of the Franchise, subjecting the Franchisee to liquidated damages as set forth in Section 19 of the Cable Ordinance, unless a Stay is ordered by the FCC.

**Section 15. INSURANCE; SURETY; INDEMNIFICATION.**

(A) Insurance.

(1) General conditions. Except as this Franchise may otherwise provide, Franchisee shall procure and maintain in full force and effect during the life of its Franchise, such insurance as is required in this Section 15 below. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and they shall be in a form reasonably satisfactory to City and properly filed and approved by the Superintendent of Insurance, State of New Mexico. Franchisee shall furnish City a minimum of seven copies of certificates of required insurance. All certificates of insurance (or policies) shall provide that 30 days' written notice be given to the City of Roswell Risk Manager before a policy is cancelled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers' compensation, the City shall be a named an additional insured. All coverages shall be primary with respect to operations provided. The certificates of insurance and endorsements for each policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates and other required proofs shall be filed within 30 days of the issuance of this Franchise, once a year thereafter, and whenever there is any change in coverage.

(B) No work without insurance. Franchisee (or those acting on its behalf) shall not commence construction or operation of the Cable System without first obtaining insurance in amounts and of a type satisfactory to City. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way or on public property. If the Franchisee, its contractors, or subcontractors do not have the required insurance, City may order such persons to stop operations until the insurance is obtained and approved.

(C) Work of subcontractors. If any part of the construction, operation or repair of the Cable System is subcontracted, Franchisee shall:

(1) Include any and all subcontractors in his insurance policies; or

(2) Require the subcontractor to secure insurance to protect himself against all hazards enumerated herein which are not covered by Franchisee's policies.

(D) Approval of insurance. Neither approval nor failure to disapprove certificates, policies or the insurance by City shall relieve Franchisee or any sub-Franchisee of full responsibility to maintain the required insurance in full force and effect.

(E) Commercial general liability insurance including automobile.

(1) Franchisee shall procure and maintain during the life of a Franchise a comprehensive commercial general liability and automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence and in the aggregate. Said policies or insurance must include coverage for all operations performed for City by Franchisee, including, but not limited to, coverage for collapse (C), explosion (X), and underground (U) liability coverage, coverage for the user of all owned, non-owned, hired automobiles, vehicles, and other equipment both on and off work, and contractual liability coverage which shall specifically insure the indemnification provisions of this Ordinance and any Franchise.

(2) The above requirements shall include, but shall not be limited to, protection against:

(a) Damage to, or destruction of, public and private property including telephone conduit, telegraph conduit, power conduit, telephone signal cable, fiber optics cable, television cable, computer cable, fire alarm circuits, gas mains, gas service connections, sanitary sewers, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipe lines, storm drains, storm inlet lines, including all appurtenances thereto while located below the surface of the ground, including injury or death, to person or persons caused by Franchisee's operations, including blasting and trenching-backfilling-tamping with or without the use of mechanical equipment; and

(b) The collapse of, or structural damage to, a building, house or structure, including power, telephone, telegraph, fire alarm, and street-light poles, curb and gutter and sidewalk, on public or private property, and destruction of, or damage to, other public and private property resulting therefrom, including injury or death to person or persons caused by Franchisee, including but not limited to as a result of Franchisee's operations in the removal of other buildings, structures, including their supports, trees and utility poles, or by excavation, including blasting, and trenching-backfilling-tamping with or without use of mechanical equipment. "Other public and private property" as used herein shall include lawns, plants, flowers, trees, fences, yards, walls, etc.

(F) City's protective public liability insurance.

(1) Franchisee shall procure and maintain during the life of a Franchise, a City's protective public liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence and in the aggregate, or Franchisee may provide City with evidence of insurance with excess limits in amounts not less than \$1,000,000.

(2) The policy will be written with City as the named additional insured and will provide coverage for City's and its employees while acting within the scope of their duties against all claims arising out of or in connection with the work to be performed.

(3) In lieu of Section 17 F (1) and (2), the City may accept equivalent coverage if approved by

the City's Risk Manager.

(G) Workers' compensation insurance. Franchisee shall comply with the provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disabling Law. Franchisee shall procure and maintain during the life of a Franchise, complete workers' and employer's liability insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices. With respect to workers' compensation insurance, if Franchisee elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction, operation or repair of the Cable System is to be subcontracted, Franchisee shall require the subcontractor similarly to provide such coverage (or qualify as a self insured) for all latter's employees to be engaged in such work. Franchisee shall save harmless City, its officers, agents and employees from any claims or actions occasioned by failure of Franchisee to comply with the provisions of this subparagraph. It is agreed that with respect to all workers' compensation insurance, the Franchisee and its insurer shall waive any right of subrogation it may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee arising out of the performance of a Franchise, unless caused by the gross negligence or malfeasance of the City, its officers, agents and employees.

(H) Alterations in limits. This Franchise shall be interpreted to permit the City to require the Franchisee to increase its insurance limits, or obtain additional types of insurance should the City determine in good faith that there are significant increased risks to the City or its citizens based on the Franchisee's actions, by such time as reasonably may be specified by the City.

(I) Ratings. Franchisee's insurer shall have no less than an "A-" policyholder's rating and a financial rating of at least Class XI in accordance with the Best's rating current at the time purchased, unless specifically waived in writing by the Risk Manager of the City.

(J) No contribution. Any insurance or self insurance maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

(K) The insurance requirements are material terms of this Franchise cannot be changed without the mutual agreement of the City and Franchisee. Franchisee shall have insurance in place as herein required by the effective date of this Franchise, and shall, upon request, provide proof of such insurance reasonably satisfactory to the City prior to the effective date of the Franchise grant.

(l) Indemnification. To the extent permitted by applicable law, Franchisee agrees to indemnify and hold harmless City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature not resulting from the actions of the City, its trustees, elected and appointed officers, agents and employees, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system, the conduct of Franchisee's business in the City, or the Franchisee's enjoyment or exercise of its franchise.

(2) The City will notify the Franchisee in writing of its duty to indemnify in any case subject to the indemnity in which the Franchisee is not a named defendant or plaintiff. The Franchisee will

employ competent counsel, reasonably acceptable to the City attorney.

## **Section 16. PERFORMANCE GUARANTEES AND REMEDIES.**

### **(A) Construction Performance Bond.**

(1) Franchisee shall obtain a performance bond in the amount of \$25,000 by the effective date of the franchise.

(2) The performance bond shall secure the faithful performance of all obligations under this Franchise.

(3) The bond shall provide that, in the event Franchisee fails to complete any Cable System upgrade, other work in the public Rights-of-Way required by this Franchise, in a safe, timely, and competent manner, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the Cable System upgrade or other work in the public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

(4) The performance bond shall provide that it shall be forfeited to the City if:

(a) The Franchisee abandons the Cable System; or

(b) The Franchise is revoked for cause.

(5) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the reasonable approval of the City; and shall contain the following endorsement: "this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(B) Material term. The required construction performance bond is a term of this franchise.

(C) Relation to insurance and indemnity requirements. Recovery by the City of any amounts under insurance, the construction performance bond or otherwise does not limit the Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee of its obligations under the franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

## **Section 17. CONTINUITY OF SERVICE.**

(A) It is the right of each subscriber in the Franchisee's Franchise Area to receive all available Cable Service offered by the Franchisee as long as the subscriber's financial and other obligations to the Franchisee are satisfied.

(B) The Franchisee shall make its best efforts to provide all Subscribers with continuous uninterrupted Cable Service. At the City's request, the Franchisee shall operate its system for a temporary period (the "transition period") following the termination of its franchise or any transfer as necessary to maintain Cable Service to subscribers, and shall cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and in no event shall be longer than twelve (12) months, unless extended by mutual consent of Franchisee and the City. During the transition period, the Franchisee will continue to be obligated to comply with the terms and conditions of this franchise and applicable

laws and regulations, and will be deemed to have the necessary authorization required from the City to enable it to provide Cable Service.

(C) If the Franchisee abandons its Cable System during the franchise term or any transition period, or fails to operate its Cable System in accordance with the terms set forth in Section 16 above, the City, at its option, may operate the Cable System or designate another entity to operate the Cable System temporarily until the Franchisee agrees to restore and restores continuous Cable Service in compliance with the franchise until the franchise is revoked and a new entity selected by the City is providing Cable Service.

(D) The City shall be entitled to exercise its rights under Section 16 if the:

(1) The Franchisee fails to provide Cable Service in accordance with its franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless such failure is due to force majeure or the City authorizes a longer interruption of service; or

(2) The Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its franchise over a substantial portion of the Franchise Area.

(E) Rights upon franchise termination or revocation. If the City revokes the franchise or the franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this franchise or under applicable law:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under applicable law.

(2) The City, by City Council resolution, may acquire ownership or effect a transfer of the Cable System at fair market value if the franchise is revoked for cause in accordance with the Cable Ordinance, at an equitable price. The terms "equitable price" and "fair market value" shall be interpreted in accordance with 47 U.S.C. § 547.

(3) Section 17(E)(2) does not apply to an abandonment. If a Cable System or any part thereof is abandoned by Franchisee, the City may require the Franchisee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit. In the event the City acquires title, Franchisee shall have no further liability for the Cable System.

## **Section 18.ENFORCEMENT AND REMEDIES: REVOCATION.**

(A) Right to revoke; generally.

(1) The City Council may revoke this Franchise if it finds that Franchisee has committed a material breach of this Franchise or repeatedly failed to comply with this Franchise; has defrauded or attempted to defraud the City or Subscribers; or has attempted to evade the requirements of this Franchise.

(2) Before revoking a Franchise, the following must have occurred:

(a) The City Manager must give Franchisee notice of an alleged default in performance (which notice will describe the nature of an alleged violation or breach) and a 30 calendar day opportunity to cure or such additional time as is reasonably necessary (the "cure period"); except that



an opportunity to cure is not required where the defect in performance is due to willful misconduct or fraud or attempted fraud, if Franchisee or any of Franchisee's officers or directors is convicted of a felony in violation of criminal law which involves or affects a material provision of this Franchise, or is part of a pattern of substantial violations where the Franchisee has already had notice and opportunity to cure. The City may extend the cure period for up to 30 additional days if Franchisee has diligently attempted to correct the alleged default.

(b) Not sooner than 30 calendar days after the City Manager notifies the Franchisee of the default (or such longer period as may be required to encompass an extended cure period), the City Council shall hold a public hearing to consider whether the Franchise should be revoked, at which time the Franchisee and the public will be given an opportunity to be heard and Franchisee to present evidence for consideration by the City Council.

(3) Following the close of the public hearing the City Council may determine whether to revoke the Franchise. If the Franchisee was entitled to an opportunity to cure a default, the Franchise may not be revoked if the default was fully cured during the cure period, including by payment of all damages and penalties owed. If the City Council determines to revoke the Franchise, it will issue a written decision setting forth the reasons for its decision.

(4) A copy of such decision will be transmitted to the Franchisee.

(B) Rights upon Franchise termination or revocation. If the City revokes the Franchise or the Franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under applicable law:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under applicable law.

(2) The City, by City Council resolution, may acquire ownership or effect a transfer of the Cable System in accordance with 47 U.S.C. § 547.

(3) Section 18 (B)(2) does not apply to an abandonment. If a Cable System or any part thereof is abandoned by Franchisee, the City may require the Franchisee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

(C) Termination in the event of bankruptcy. This Franchise will terminate automatically by force of law 180 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 180 day period, if:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver or trustee has fully complied with the terms and conditions of this Franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of Franchisee, the City may revoke the Franchise following a public hearing before the City Council, by serving notice upon the

Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless:

(a) The City has approved the transfer of the Franchise to the successful bidder; and

(b) The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise.

(D) Effect of termination or forfeiture. Upon termination or forfeiture of this Franchise, whether by action of the City as provided above, or by passage of time, the City may do one or a combination of the following:

(1) Franchisee must, should the City so direct, stop using the Cable System for the purposes authorized by the Franchise.

(2) The City may require the former Franchisee to remove all or a portion of its facilities and equipment at the former Franchisee's expense, subject to any right Franchisee may have to abandon property in place. If the former Franchisee fails to remove its property within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

(3) The City, by resolution of the City Council, may acquire ownership or effect a transfer of all or a portion of the Cable System in accordance with 47 U.S.C. 547. Franchisee shall execute such deeds and other papers as are necessary to transfer ownership to the City, free and clear of all encumbrances. Determination of fair market value shall be established by appraisal, with one appraiser appointed by the City, one by the Franchisee, and a third by the two appraisers.

(4) Notwithstanding the foregoing, the City may not, pursuant to this section, issue an order that violates 47 U.S.C. § 541(b)(3)(c).

## **Section 19. MISCELLANEOUS PROVISIONS.**

(A) Compliance with laws. The Franchisee shall comply with all applicable federal, state and local laws and regulations as they become effective, unless otherwise stated herein.

(B) Governing law. This franchise shall be governed and construed in accordance with the statutes and laws of the state of New Mexico.

(C) No pledging of City's credit. Under no circumstances shall Franchisee have the authority or power to pledge the credit of City or incur any obligation in the name of City. Franchisee shall save and hold harmless the City, its City council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Franchisee under this franchise.

(D) Venue. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the Fifth Judicial District Court, State of New Mexico or, where otherwise appropriate, exclusively in the United States District Court for the district of New Mexico.

(E) Force majeure. The Franchisee shall not be deemed in default with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond the Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of affiliates are not beyond the Franchisee's control, and the knowledge of affiliates shall be imputed to Franchisee. The franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its

franchise without unduly endangering the health, safety and integrity of the Franchisee's employees or property, or the health, safety and integrity of the public, public Rights-of-Way, public property, or private property.

(F) Notices. Unless otherwise expressly stated herein, notices required under this franchise shall be mailed first class, postage prepaid, or sent overnight delivery to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Franchisee shall be mailed to:

Cable One, Inc.  
General Manager  
2005 S. Main Street  
Roswell, New Mexico 88203

Copies of any notice to the Franchisee must also be given to:

Vice President and General Counsel  
Cable One, Inc.  
210 E. Earll Drive,  
Phoenix, AZ 85012

(2) Notices to the City shall be mailed to:

Mayor  
City of Roswell  
P.O. Box 1838  
Roswell, New Mexico 88202-1838

Copies of any notice to the City must also be given to:

City Attorney  
P.O. Box 1838  
Roswell, New Mexico 88202-1838

(G) Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

(H) Time of essence; maintenance of records of essence. In determining whether the Franchisee has substantially complied with its franchise, the parties agree that time is of the essence to this franchise. The maintenance of records and provision of reports in accordance with the franchise is also of the essence to this franchise.

(I) Captions. The captions and headings of this franchise are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this franchise.

**Section 20. REPEALER.** City Ordinance Number 04-04 is hereby repealed.

**Section 21. SEVERABILITY CLAUSE.**

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be illegal, unconstitutional, invalid or unenforceable by a court, agency or legislature of competent jurisdiction, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this franchise. If the parties are unable to agree to a modification of this franchise within sixty (60) days, either party may with ninety (90) days prior notice, terminate or shorten the franchise term; or resort to litigation to seek any available equitable relief; or do both. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within fourteen (14) days of a request by such other party that it enter into negotiations, or else the materiality claim is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding the dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

**Section 22. COMPILATION**

This Ordinance shall be incorporated in and made part of the Ordinances of Roswell.

**Section 23. EFFECTIVE DATE**

This Ordinance shall take effect five (5) days after publication.

PASSED, ADOPTED, SIGNED and APPROVED the 14<sup>TH</sup> day of April, 2016.

CITY SEAL

\_\_\_\_\_  
Dennis Kintigh, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Coll, City Clerk

Underscoring indicates addition to ordinance section.  
~~Strike through~~ indicates delete of an ordinance section

## **PROPOSED ORDINANCE NO. 16-06**

**GRANTING A RENEWAL OF A CABLE FRANCHISE TO CABLE ONE, INC. ("CABLE ONE, INC") FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE SYSTEM IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE FRANCHISE AREA, FOR THE PURPOSE OF PROVIDING CABLE SERVICE; ESTABLISHING THE TERMS AND CONDITIONS OF THE FRANCHISE; ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE FRANCHISE; REPEALING CITY ORDINANCE NUMBER 04-04**

**BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO:**

### **Section 1**

THE CITY COUNCIL HEREBY FINDS:

(A) CABLE ONE, INC. submitted a request pursuant to 47 U.S.C. §546 (h) for a renewal franchise to construct, upgrade, operate and repair a cable system in the City of ROSWELL and to provide Cable Service within the City.

(B) CABLE ONE, INC, and its predecessors in interest have operated a Cable System in the City of Roswell pursuant to the authority conferred by City Ordinance Numbers 995, 1057, 1116, 1184 and currently under City Ordinance Number 04-04.

(C) The Roswell City Council, having considered the interests proposed and advanced, has found that the grant of the renewal franchise requested, subject to conditions, is in the public interest.

(D) CABLE ONE, INC is willing to accept unconditionally the conditions of the renewal franchise grant as stated herein.

(E) The ROSWELL City Council held a public hearing on the proposed franchise renewal conditions on the 14<sup>th</sup> day of April, 2016, after providing legal notice of the hearing, as required by law.

(F) Pursuant to Section 3-42-1, et. seq., NMSA 1978, as amended from time to time, the City Council hereby grants a cable franchise renewal to CABLE ONE, INC as follows:

### **Section 2. DEFINITIONS.**

References to any City official or City office also refer to any official or office that succeeds to any or all of the responsibilities of the named official, whether by succession or otherwise. In addition, the following definitions shall apply:

ACCESS, PEG ACCESS, OR PEG USE. The availability of selected Cable System channels or open video system channels for non-commercial public, education or government use including institutional network use by various eligible agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create, and distribute programming not under a Franchisee's editorial control (except as required by applicable law) for which the Cable System will have no legal liability, including, but not limited to:

(1) **Public Access or Public Use.** Non-commercial access where organizations, groups, or individual members of the general public are the primary or designated programmers or users having editorial control over their programming.

(2) **Education Access or Education Use.** Non-commercial access where accredited schools are the primary or designated programmers or users having editorial control over their programming.

(3) **Government Access or Government Use.** Non-commercial access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming

**AFFILIATE.** A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with another person.

**CABLE MODEM SERVICE.** A two-way activated system that provides access to the internet and data transmission at speeds at least as great as 200 kilobits per second.

**CABLE ORDINANCE, ORDINANCE or FRANCHISE.** This ordinance and any amendments, exhibits or appendices hereto.

**CABLE SERVICE.** The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and the Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, but does not include telephony or internet services.

**CABLE SYSTEM.** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) a facility that serves Subscribers without using, or connecting to a facility that uses, any public Right-of-Way within the City;

(3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) any facilities of any electric utility used solely for operating its electric utility systems; or

(5) an OVS that is certified by the Federal Communications Commission (FCC).

**CITY.** The City of Roswell; except that, when used to describe a geographic area, the term refers to the boundaries of the City of Roswell, New Mexico, as they exist now or may exist in the future via annexation or consolidation.

**DESIGNATED ACCESS PROVIDER.** An eligible entity or entities designated by the City to manage some or all of the PEG channels, facilities and equipment.

**FRANCHISE AREA.** All parts of the City now existing or hereafter annexed.

**FRANCHISEE.** CABLE ONE, INC., and its lawful and permitted successors, assigns and transferees.

**GROSS REVENUE.** Gross Revenue shall mean and include: Any and all revenue of Franchisee, of any kind, nature or form derived from the operation of a Cable System to provide Cable Service. Gross Revenues shall be interpreted consistent with FCC regulations and rulings and include, by way of example and not limitation, revenues from equipment sales and rentals, services (including Cable Modem Services, if such services are determined by statute, the FCC, or the judiciary to be a Cable Service), installation, late fees and other Subscriber charges, advertising and shopping services. The term includes revenues that are received now, as well as new revenue sources from delivery of Cable Service that may develop in the future; but it does not extend to amounts received by Franchisee as a tax, fee (including franchise fee) or assessment of general applicability collected by Franchisee for pass-through to a governmental agency or reimbursement from third parties for expenses, nor to bad debt or to refunds or credits issued. The term shall be construed to include revenues of Franchisee's Affiliates (other than those revenues which are already treated as the revenues of the Franchisee upon which a fee is paid), only to the extent necessary to prevent avoidance of fees owed on Franchisee's Gross Revenues from the delivery of Cable Service. Cable System revenues shall be as defined by GAAP.

**PEG CHANNEL.** Any capacity on the cable system set aside by Franchisee for PEG (public, education, or government) use.

**PUBLIC RIGHTS OF WAY.** The surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, or right of way or easement dedicated to compatible uses, now or hereafter existing within the City which may be properly used for the purpose of installing, maintaining, and operating a Cable System; and any other property that Franchisee is entitled by state or federal law to use by virtue of the grant of this Franchise.

**STANDARD DROP.** An aerial connection extending no more than 150 feet from the potential subscriber's demarcation point to the nearest point of distribution on the cable system from which Cable Service can be provided to that subscriber.

**SUBSCRIBER.** The City or any person who lawfully is receiving Cable Service from a Franchisee and does not further distribute such service.

**SUBSCRIBER NETWORK.** The fibers, coaxial cables and the electronic devices and other components that are primarily used in the provision of Cable Service to residential subscribers.

### **Section 3. GRANT OF FRANCHISE; LIMITS AND RESERVATIONS.**

(A) Grant, term and effective date.

(1) A Cable Franchise is hereby granted to Franchisee, subject to the conditions set forth in this Franchise. This Franchise grants the right, subject to conditions, to construct, upgrade, operate, maintain and repair a Cable System in, over, along and under City Rights-of-Way for the purpose of providing Cable Service and for PEG use of the Cable System, commencing on the effective date of the Franchise through and including January 1, 2026, unless terminated prior to that date in accordance with this Franchise or applicable law. This Franchise shall remain as a valid and enforceable agreement between the parties following the expiration date so long as both parties continue to abide by and honor the terms of this Franchise agreement.

(2) The grant shall become effective thirty (30) days after adoption of this Ordinance except as provided in Section 3(A)(3).

(3) The grant shall not become effective unless and until Franchisee has:

(a) Filed an unconditional acceptance of the grant made by this Ordinance substantially in the form in Exhibit A and;

(b) Made all payments, posted all securities and guarantees, and supplied all information that it is required to supply prior to or upon the effective date of the Franchise. If Franchisee fails to satisfy these obligations within thirty (30) days of the effective date of this Ordinance, the Franchise grant shall be deemed rescinded.

(B) Relation to other provisions of law.

(1) The Franchise issued by the City is subject to applicable federal and state law. References to laws or "applicable laws" in this Franchise include federal, state and local laws (and regulations lawfully adopted pursuant to those laws) now in effect, and to amended or new federal and state laws lawfully enacted. This Franchise does not confer rights upon the Franchisee other than as expressly provided herein, nor pass rights by implication except those that may otherwise vest pursuant to governing law. The Franchise does not convey title, equitable or legal, in the Public Rights-of-Way or public property. Franchisee shall not subdivide or sublease to any other person or affiliate any right granted to Franchisee herein, shall provide Cable Service complying with all the conditions of this Franchise throughout the Franchise term, and shall, subject to Franchisee's reasonable terms and conditions, make any Cable Service it provides over its Cable System available without unlawful discrimination to Subscribers in its Franchise Area.

(2) This Franchise and all rights granted under the Franchise are subject to the lawful and non-discriminatory exercise of the police powers the City now has or may later obtain, including but not limited to the power of eminent domain; and are further subject to the exercise of the City's rights as a property owner under state and federal laws. Except as expressly set forth herein, neither the granting of this Franchise or any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain, and the right to grant additional cable franchises. However, once effective, this Franchise is a contract and except as to those changes which are the result of the City's lawful and necessary exercise of police powers, neither party may take any unilateral action which changes the explicit mutual promises. This Franchise shall not be construed as any limitation upon the right of the City to grant to other persons or entities rights, privileges and authority similar to the rights, privileges and authority granted to Franchisee.

(3) The Franchise shall be interpreted to convey rights and interests only as to those City Rights-of-Way and easements in which the City has an actual interest and only to the extent and for the purposes set out in the Franchise or available pursuant to governing law. The City acknowledges that the grant of access to the City Rights of Way is an essential element of consideration for this Franchise.

(4) The Franchise issued and the franchise fee paid hereunder are not in lieu of any other required generally applicable permit, authorization, fee, charge or tax. Without limiting the foregoing, the City, among other things, does not waive the requirements of, or the Franchisee's duty to obtain, all applicable permits, and to comply with the conditions thereof; to comply with zoning laws; or to comply with any generally applicable codes, ordinances and regulations governing the construction of the cable system.



(C) Interpretation and conflicts. This Franchise authorizes only the provision of Cable Service. This Franchise does not eliminate any obligation of the Franchisee to obtain other authorizations as lawfully may be required. Nothing in this section is intended to expand or contract the City's rights to regulate non-cable services as those rights may exist under governing law.

(D) Affiliates must comply. Any Affiliate or joint venture or partner of the Franchisee involved in the management or operation of the Cable System in the City that would constitute a cable operator of the Cable System is subject to the limitations of, and shall comply with the terms and conditions of the franchise. The Franchisee shall be fully liable for any act or omission of an affiliate that controls the Franchisee or is responsible in any manner for the management of the Cable System that results in a breach of this Franchise, as if the act or omission was the Franchisee's act or omission.

(E) Relation to prior franchise. As of the effective date of this Franchise, with the exception noted in the following sentence, the rights granted under Roswell City Ordinance No. ~~04-04~~ are superseded and of no further force and effect. Subject to any applicable statute of limitations, nothing in this paragraph shall be deemed to release the Franchisee from any liability arising under the prior franchise during the time it was in effect except that former rights applicable to such liabilities shall continue to apply. Franchisee shall provide proof satisfactory to the City that it will continue to provide the same or greater indemnity required under the prior franchise, and that it continues to maintain adequate insurance for injuries to persons or property that may have occurred during the prior franchise term.

(F) Validity. Both parties waive any claim or defense that any provision of this Franchise as it existed on the date the Franchise was signed, is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any other applicable law.

(G) Effect of franchise acceptance. By accepting this renewal Franchise, the Franchisee:

- (1) Acknowledges and accepts the City's legal right to issue and enforce the Franchise;
- (2) Accepts and agrees to comply with each and every provision of this Franchise;
- (3) Agrees that it will not oppose intervention in any legal action that directly affects the City's rights under the Franchise;
- (4) Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(H) Franchisee bears its own costs. Unless otherwise expressly provided in this Franchise all acts that the Franchisee is required to perform under this Franchise shall be performed at its own expense. This provision is not intended to limit any right the Franchisee may have to pass through to Subscribers or other third parties Franchise related or other costs incurred in exercising rights and obligations under this Franchise.

(I) No waiver.

(1) The failure of either party, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing; no course of dealing between a Franchisee and the City shall operate as a waiver of any such rights.

(2) A waiver of one right shall not be deemed a waiver of any other right, similar or dissimilar.

(J) No recourse. Without limiting such immunities as the City or other persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Franchise or because of the enforcement of this Franchise or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(K) Effect of change in law. In the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this franchise, then the provision shall be read to be preempted or limited to the extent and for the time, but only to the extent and for the time, that such laws, rules or regulations validly acted to preempt or limit such provision. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed, so that the provision hereof that had been preempted or limited is no longer so affected, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the affected party.

#### **Section 4. TRANSFERS.**

(A) No transfer without City approval. Franchisee agrees that the rights granted to it by the City are personal in nature and held in trust. No transfer may occur without the prior consent of the City. The City need not consider an application for a transfer until Franchisee has filed all information required under applicable law.

(B) No transfer of a Franchise, Franchisee, or Cable System or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to City and City's prior written consent is obtained, pursuant to this Section of the Franchise, and only then upon such terms and conditions, pursuant to law, the City reasonably deems necessary and proper to protect the public interest. City will not unreasonably withhold consent to a requested transfer. Transfer applications shall be deemed to be held in trust, and to be personal to the Franchisee. Any transfer that is made without the prior approval of City shall be without affect. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer. An application for a transfer must be submitted at least 120 days prior to the date the transaction is scheduled to be consummated. If the City does not act upon an application for transfer within 120 days, it shall be deemed approved.

(C) A change of control of the Franchise, Franchisee, or Cable System shall be deemed to have occurred whenever there is a change, acquisition or transfer of control of more than a twenty five percent (25%) ownership in the Franchisee or its direct or indirect parents by any person, or a group of persons acting in concert who did not prior to the time of such change, acquisition or transfer already own twenty five percent (25%) or greater ownership interest in the Franchisee or the direct or indirect parent, except where such change, acquisition or transfer involves only limited partner interests. Without limiting the above, any change in the majority of the general partners of Franchisee (if any) will be presumed a change in control. A transfer also occurs whenever there is a change in actual working control (but not including non-ownership management), in whatever manner exercised, over the affairs of a Franchisee or its direct parents. For purposes of clarification,

administrative restructurings that do not involve the introduction of new management would not be considered a change of control (e.g. a new holding company with the same shareholders or a change in reporting structure within the same parent organization).

## **Section 5. FRANCHISE FEE.**

(A) Payment to City. The Franchisee shall pay the City a franchise fee in an amount equal to five percent (5%) of Gross Revenues.

(B) GAAP (General Acceptable Accounting Principles) applies. Records of Cable System revenues and expenses shall be kept in accordance with GAAP.

(C) Not in lieu of any other assessments, tax or fee. The franchise fee is in addition to all other generally applicable fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law, except as required by 47 U.S.C. § 542.

(D) Payments. Franchise fees shall be paid quarterly commencing thirty days after the end of each calendar quarter. Payments shall be accompanied by a statement that provides the City with a reasonable level of detail identifying the sources of income from which gross revenue is calculated, the number of subscribers for the period, and such other information as the City may reasonably request be included.

(E) No accord or satisfaction. In accordance with the appropriate statute of limitations, no acceptance of any payment by the City required by this Franchise shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the Franchisee.

(F) Payment records. The City may, from time to time, and upon reasonable advance written notice, inspect and audit any and all books and records to determine whether Gross Revenues and franchise fees have been accurately computed and paid. The Franchisee agrees to produce all financial records necessary for the City to review in the City of Roswell. In addition to paying all fees owed plus interest equal to 3% above the rate for the three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the payment, in the event that the City reviews the Franchisee's franchise fee payments, and finds that the Franchisee has underpaid the fee owed for any year in an amount exceeding five percent (5%) of the franchise fees actually paid or ten thousand dollars (\$10,000), whichever is less, Franchisee shall pay the reasonable cost of the City's review. The City agrees not to audit more than once every two years, but must audit at least once every three years.

(G) Consumer disclosure. The amount of a subscriber's total bill assessed as a franchise fee may be listed as a separate line item.

## **Section 6. EXERCISE OF RIGHTS UNDER A FRANCHISE – MINIMUM CONDITIONS ON USE OF PROPERTY; CONSTRUCTION.**

(A) City use of facilities. Subject to meeting the requirements of National Electrical Safety Code of the American Insurance Association and all applicable state and local laws and rules, the City shall have the right at its own expense to install and maintain free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not interfere with the Cable Service

operations of the Franchisee.

(B) Joint use. Upon request by the City and to the extent the Franchisee legally can do so, pursuant to its leases and agreements with other persons using the Right-of-Way, the Franchisee will grant joint use of easements or private Rights-of-way which it now, or in the future, has an interest in, to the City for purposes, including but not limited to parks, drainage facilities, bikeways, traffic conduits, mass transit corridors, sanitary sewer lines, pedestrian area parking, open spaces, and electric, natural gas, and water service distribution, provided that the Franchisee shall not be required to make such an offer in any circumstance where such offer would interfere with the Franchisee's use of the easements or private Rights-of-Way or in any instance where the City would provide Cable Service. If the City's joint use is accepted by the Franchisee, then any fees Franchisee is required to make for the joint use shall be paid by the City and any improvements deemed appropriate by the City shall be made by the City at its sole expense.

(C) Budgeting. To facilitate the City's annual budget process, on or before the 1st of November and each succeeding 1st of November thereafter during the term of any Franchise granted under this Article, the Franchisee will provide the City, upon City's request, with an estimate of the Gross Revenue and resultant franchise fee for the following calendar year. The estimated Gross Revenues and resultant franchise fees are not a guarantee and shall not create a duty or obligation on the part of the Franchisee to meet Gross Revenue estimates or remit any estimated franchise fee amounts.

(D) All work subject to City laws and regulations. The construction, operation, and repair of Cable System shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. Persons engaged in the construction, operation, or repair of the Cable System shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

(E) Permits. Construction, operation, or repair of the Cable System shall not commence until all required permits have been obtained from the proper City officials and all required permit fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. City will not unreasonably withhold granting of permits. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable time line set forth by the City, unless Franchisee receives the necessary permits and approvals and/or corrects the non-compliant work or construction. To the extent generally required of others for construction within the City, Franchisee shall reimburse the City for costs incurred in inspecting construction undertaken in the course of major upgrades and/or installation of fiber optics.

(F) Safety codes. Without limiting the foregoing, the installation of the Cable System shall be in accordance with the relevant requirements of the National Electrical Safety Code of the American Insurance Association (successor to National Board of Fire Underwriters) and all applicable laws, ordinances, rules, regulations of the state and of the City affecting electrical installations and buildings in effect at the time of such installation. All structures and all lines, equipment, and connections in, over, under, and upon the streets shall at all times be kept and maintained in a safe,

suitable, substantial condition, and in good order and repair.

(G) Maps. Franchisee shall file maps and/or drawings showing the location of any construction or extension of its facilities and services in any Public Rights-of-Way of the City. For multi-conduit duct banks, maps and drawings shall show overall size, material, and configuration of the duct bank.

(H) Installations, excavations, and restorations. The City shall have the right to regulate the time, manner and location of facilities in the Public Rights-of-Way. Without limiting the foregoing, the City may require Franchisee, where unreasonable delay in Franchisee's work will not result, to coordinate its work with work performed by others in the Public Rights-of-Way so that interference with the use of the Public Rights-of-Way by others, including others that may be installing cable systems, may be minimized. The City may require a person using the Public Rights-of-Way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the Public Rights-of-Way, subject to Franchisee's right to not be unduly delayed in its emergency or planned work. The Franchisee shall have the right to excavate in, occupy, and use all Public Rights-of-Way and easements dedicated for compatible uses for the purpose of installing, erecting, constructing, repairing, maintaining, removing, relocating, and operating the Cable System after obtaining any and all appropriate permits from the City, provided, however, that:

(1) The Franchisee shall not place any of its facilities on, over, under, or within any City park, duly designated as such by the City without first having obtained the written permission of the City;

(2) The Franchisee shall not place any of its facilities on, over, or within the median portion of any boulevard or parkway, except for perpendicular crossings, without first having obtained the written permission of the City;

(3) No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property involved;

(4) The City reserves the right to determine the location of work in the Right-of-Way. The City shall not unreasonably withhold or restrict Franchisee's access to Rights-of-Way; and,

(5) Franchisee shall endeavor to employ trenchless technology in the placement of its facilities where technically and financially appropriate.

(I) Work involving excavations; notice. Except in an emergency, prior to the commencement of any work by the Franchisee which involves excavation in any Public Rights-of-Way, the Franchisee shall notify the City, and shall pay any generally applicable fees.

(J) Clean-up and restoration. After any excavation shall be made and after work is completed, the Franchisee, at Franchisee's expense, shall as soon as practicable but not longer than two days, weather permitting, remove all surplus material, and restore the portion of the Public Rights-of-Way to a condition that reasonably meets or exceeds the pre-excavation condition of such Rights-of-Way, subject to inspection by the City. Any other affected public or private property shall be restored to a condition reasonably as good as that which existed prior to the work. If the Franchisee fails to restore promptly the affected property, including reseeding, then following written notice to Franchisee, and reasonable opportunity to cure, the City may make the restoration in a manner satisfactory to City, and all costs incurred for such restoration, whether done with City work forces and equipment or otherwise shall be paid by the Franchisee, including the cost of any inspectors the City may assign to the project.

(K) Maintaining facilities in good condition. The Franchisee shall be responsible for the maintenance of its own equipment, facilities, and appurtenances placed upon, over, or under the public Right-of-Way, including the removal of all graffiti from Franchisee's property. If five (5) days after notice from the City such graffiti has not been removed, it will be removed by the City at Franchisee's sole cost.

(L) Persons with disabilities. The Franchisee shall ensure its public facilities in Public Rights-of-Way are located and constructed in a manner consistent with any requirements of the Americans with Disabilities Act (ADA) applicable at the time of construction. Following notice by the City of an ADA construction problem, the Franchisee shall have 30 days or other reasonable time to remedy the problem, subject to Franchisee's right to contest the alleged ADA violation.

(M) Utility coordinating committee. Execution of any Franchise requires the Franchisee to participate with a local utility coordinating committee, or a Franchisee may provide a similar service pursuant to a Franchise, which service would be governed by state law. If the Franchisee elects to become a member of the local utility coordinating committee, the Franchisee further agrees to participate in such organization(s) and abide by their articles of incorporation, by laws, and other requirements.

(N) Use of existing poles and conduit. Franchisee shall use existing poles and conduit wherever appropriate. Additional poles may not be installed in the Right-of-Way without the permission of the City. While it is the policy of the City to minimize the increase of any above ground utilities, no undergrounding shall be required solely because of the Franchisee's status as a Cable System, nor where other existing utility facilities are above ground.

(O) Publicizing proposed construction work.

(1) Franchisee will publicize the initial build or any substantial rebuild or upgrade of its Cable System cable in each affected neighborhood at least one week before commencing that work by providing written notice to the City and by notifying those persons whose property is within 300 feet of the work in at least two of the following ways:

- (a) Telephone;
- (b) In person;
- (c) By mail;
- (d) By distributing flyers to residences; or
- (e) By publication in local newspapers or by television public service announcement.

(2) Apart from any initial build or substantial rebuild or upgrade, any construction will be publicized in accordance with applicable notice requirements.

(3) Before entering onto any person's property, Franchisee will contact the property owner or, in the case of residential property, the resident in the manner described in this section. If Franchisee must enter a residence or building, it must schedule a mutually convenient appointment with the owner or resident. No cable, line, wire, amplifier, converter or other piece of equipment owned or controlled by the Franchisee shall be installed by the Franchisee inside a dwelling or other occupied structure without first securing the permission of the owner or the lawful occupant of the property involved.

(4) For the purposes of this section, the term "substantial rebuild or upgrade" means the planned replacement or addition of trunk or distribution cable (but not drops) affecting:

- (a) More than 10% of the Cable System Subscribers; or
- (b) Involving more than 20 miles of plant.

(5) During the period of any Cable System cable initial build or rebuild, Franchisee will maintain a file open for public inspection showing its timetable for constructing the Cable System cable by area of the City.

(P) System Maintenance. Scheduled maintenance will be performed to minimize the effect of any necessary interruptions of Cable Service.

(Q) Relocation.

(1) Franchisee shall, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the City by reason of traffic conditions; public safety; public Right-of-Way construction and repair (including re-grading, resurfacing or widening); public Right-of-Way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement. Collectively, such matters are referred to below as the "public work." If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(2) The City or agent shall provide written notice describing where the public work is to be performed at least two weeks prior to the deadline by which Franchisee must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency or where a Cable System creates or is contributing to an imminent danger to health, safety, or property (and in which case without prior notice), or where the Franchisee has failed, after the notice provide above, to protect, support, temporarily disconnect, relocate or remove its facilities, the City may protect, support, temporarily disconnect, remove, or relocate any necessary parts of the Cable System and charge Franchisee for costs incurred.

(3) Upon written notice of need, Franchisee shall use reasonable good faith efforts to accommodate the construction, operation or repair of the facilities of another person authorized to use the Public Rights-of-Way or public property. A person seeking accommodation shall provide Franchisee reasonable notice, but, except in case of emergency, not less than 30 days prior to the time the accommodation work is to be completed. Such person shall have responsibility for any and all costs associated with Franchisee's efforts to protect, support, temporarily disconnect, relocate or remove its facilities to accommodate the requesting person.

(4) Nothing herein shall be construed to reduce or otherwise affect any right the City or Franchisee has to recover, seek contribution for, or to offset the costs of complying with the requirements of this provision.

(R) Undergrounding. Franchisee shall locate or relocate its facilities underground:

(1) During construction in any area where all existing electric and telephone utilities are located underground or in an area where all electric or telephone utilities are required to be relocated underground; and

(2) In any area where all owners of poles locate or relocate facilities underground,

concurrently with the placement of the pole owner's facilities underground. Location or relocation underground according to this provision shall be without direct cost to the City. If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(S) Public works and improvements.

(1) Whenever the City shall excavate or perform any work in any present and/or future Public Rights-of-Way of the City, or shall contract, for such excavation or work, where such excavation or work may disturb but not require removal or relocation of Franchisee's facilities, the City shall notify the Franchisee sufficiently in advance of such contemplated excavation or work to enable the Franchisee to take such measures as may be deemed necessary to protect and support such facilities from damage or injury to the public or the City's Public Rights-of-Way. If the Franchisee cannot take such measures, the Franchisee may be required to relocate its facilities in accordance with this Article. In such case, the Franchisee upon request shall furnish field markings to the City or contractor, as the case may be, showing the location of all its facilities in the area involved in such proposed excavation or other work.

(2) Whenever Franchisee shall excavate or perform any work in any present and/or future Public Rights-of-Way of the City, or shall contract, for such excavation or work, where such excavation or work may disturb but not require removal or relocation of City's facilities, Franchisee shall notify the City sufficiently in advance of such contemplated excavation or work to enable City to take such measures as may be deemed necessary to protect and support such facilities from damage and possible inconvenience or injury to the public or City's Public Rights-of-Way. If the City's facilities are not clearly marked, the City will notify Franchisee and provide field markers or locaters for their facilities.

(3) Nothing herein shall be construed to reduce or otherwise affect any right Franchisee has to recover (from a party other than the City), seek contribution for or to offset the costs of complying with the requirements of this provision. If funds are available to any person using the Public Rights-of-Way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of Franchisee.

(T) Moving of buildings. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery, or other object, the Franchisee shall perform such rearrangement upon receipt of payment for the estimated costs incurred by the Franchisee in making such rearrangements, and provided that Franchisee received written notice at least 30 days in advance from the person or persons desiring to move said building, machinery, or other objects. The written notice shall detail the route of movement of the building, machinery, or other object. The costs incurred by the Franchisee in making such rearrangements of its aerial plant will be borne by the person or persons seeking such rearrangement, unless the aerial plant is placed or maintained in violation of the applicable rules of any local, state, or federal regulatory agency and thereby unlawfully interferes



with the movement.

(U) Interference and Review of City Project Plans. Upon submittal by the City of City construction plans, the Franchisee will review and identify locations of cables and/or conflicts within two weeks of request. The City may require co-location in common trenches where appropriate.

(V) Restoration of property. The Franchisee shall reconstruct, replace, or restore to its previous condition in a timely fashion that portion of any street, alley, or public way or place; and any water, sewer, sanitary sewer, storm drainage, traffic signalization or other facility of the City, disturbed or damaged by the Franchisee, to a condition reasonably acceptable to the City consistent with reasonable standards of safety and appearance as required by generally applicable law and codes adopted pursuant to exercise of the City's police powers.

(W) Supplying maps. Franchisee shall maintain on file all available maps, operational data, and reports pertaining to its operations in the City. The City may inspect the maps, data, and reports at any time during business hours. Upon request of the City, the Franchisee shall furnish to the City, as soon as practicable without charge, current maps showing the location and dimension of any facilities within the Franchise Area. Franchisee supplying maps under this provision may excise proprietary information so long as the location and dimension of any facilities, and their character (e.g. pole, equipment cabinet, fiber optic cable, power line) are clearly shown.

(X) Conditions of sale.

(1) If a renewal of a Franchise held by Franchisee is denied and the City acquires ownership of a Franchisee's Cable System, or effects a transfer of ownership of the system to another person, the valuation of any such acquisition or transfer shall be in accordance with 47 U.S.C. §547(a).

(2) If a Franchise held by Franchisee is revoked for cause and the City acquires ownership of the Cable System or effects a transfer of ownership of the system to another person, the valuation of any such acquisition or transfer shall be in accordance with 47 U.S.C. §547(b).

(Y) Utility contracts. Within 30 days of Franchisee contracting with another utility provider to use any property or facilities of Franchisee located in the Right-of-Way, Franchisee agrees to notify the City of such contract and identify the provider.

(Z) Failure to perform. If Franchisee should fail to perform any work required under this Section after written notice and reasonable opportunity to cure, the City may cause work to be performed, and may bill the Franchisee therefore, or draw upon any security fund or bond to recover its costs. If the City bills the Franchisee, the Franchisee shall pay the amount billed within 30 days of receipt of the bill.

## **Section 7. CONSTRUCTION PROVISIONS.**

(A) General system design.

(1) Equipment and facilities shall be maintained so that the subscriber network is capable of transporting at least fifty-four (54) analog and / or digital channels.

(2) Franchisee shall install and maintain facilities and equipment that permit and are capable of meeting FCC standards for passing through the program related television video and audio signals received at the headend without substantial alteration or deterioration (thus, for example, the system will include components such that a signal received at the headend in color may be received by a subscriber in color, and a stereo signal in stereo). Without limiting the foregoing, facilities and

equipment shall be installed and operated so that subscribers can receive closed captioning and secondary audio in accordance with federal law and regulation. Franchisee, except as applicable FCC regulations may prohibit, may affect vertical blanking intervals in transmissions.

(3) Franchisee shall comply with applicable federal laws concerning system compatibility with subscribers' consumer electronics equipment. Franchisee shall comply with all applicable laws concerning disabled access to its services.

(4) Franchisee shall deliver maps or drawings to the City showing the location of its trunk and distribution lines and other major facilities located in the rights of way. The maps need not reflect all electronic components and may exclude any sensitive commercial information.

(5) Construction standards. Franchisee will comply with all lawful and generally applicable construction standards utilized by the City.

(a) The construction, operation, and repair of the Cable System will be in accord with all applicable law. At a minimum, all construction by Franchisee done by Franchisee after the effective date of this Franchise shall comply with the Manual of Construction Procedures most recently submitted; IEEE standards, the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The most stringent applicable code or standard will apply in the event of any conflict (except insofar as that standard, if followed, would result in a system that could not meet requirements of federal, state or local law). The construction, operation, and maintenance of the cable system shall be performed by experienced and properly trained properly and licensed maintenance and construction personnel.

(B) Standards following completion of upgrade. Upon completion of any cable system upgrade, the Cable System shall:

(1) Utilize facilities and equipment generally comparable to that used in other high-quality, reliable cable systems of similar design, including commercially reasonable backup power resources. The Cable System shall have the level of reliability required to support a high-quality, broadband information service;

(2) Be two-way activated and shall include the facilities and equipment (except customer premises equipment) required to support broadband interactive services, such as Internet services.

(3) Provide reliable service and possess auto-start back-up power at the headend and elsewhere reasonably necessary (consistent with accepted industry standards and the system design) to avoid or minimize service interruptions. Back up power supplies at critical points in the distribution system shall be capable of carrying their individual loads for a minimum of two (2) hours. Franchisee shall be able to identify power outages affecting the Cable System and when and where the Cable System has switched to back-up power supplies.

**Section 8. PRESERVATION OF BENEFITS AND STATUS QUO.** As of the effective date of the franchise, Franchisee was providing one (1) channel to subscribers for PEG use. It will continue to provide that channel for PEG and/or I NET use, continue the current personnel support and continue to maintain the wiring that connects the City's studio to Franchisee's headend. The City will continue to manage its equipment and facilities

## **Section 9. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

(A) Support equipment and facilities.

(1) Franchisee must have sufficient equipment and facilities and the trained and skilled personnel required so that Franchisee complies with each and every requirement of applicable law, including applicable customer service requirements, technical standards, maintenance standards and requirements for responding to system outages. This includes the facilities, equipment and staff required to:

(a) Properly test the system and conduct an ongoing and active program of preventive maintenance and quality control; and

(b) Be able to quickly respond to customer complaints and resolve system problems.

(2) Franchisee must ensure that its headend has adequate space and is otherwise properly designed in order to accommodate the equipment and facilities necessary to meet its obligations under the franchise.

(B) Technical standards. The cable system must meet or exceed the technical performance standards set forth in 47 C.F.R. § 76.601 and any other applicable standards, provided that, nothing in this provision is intended to permit the City to exercise any authority that it is prohibited from exercising under applicable federal law.

(C) Future upgrades. It is Franchisee's responsibility to make such commercially practicable improvements to its Cable System throughout the Franchise term to ensure that Subscribers are able to obtain advanced Cable Service, and so that services can be added throughout the franchise term.

(D) Tests during construction.

(1) Franchisee shall conduct acceptance tests on each newly constructed or upgraded segment prior to subscriber connection or activation.

(2) Franchisee shall test random samples of components before installation.

(3) Franchisee shall prepare reports sufficient to show the testing required in Sections 8(D) - 8(G) have been completed.

(E) Inspection and testing. The City shall have the right to inspect the Cable System during and after the upgrade to ensure compliance with this franchise, and applicable provisions of local, state and federal law. The City:

(1) May require the Franchisee to perform tests based on the City's investigation of Cable System performance or on subscriber complaints; and

(2) May require Franchisee to prepare a report to the City on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the City's authority under applicable law.

(F) System maintenance.

(1) Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected Subscriber's service problems, only after a minimum of forty-eight (48) hours' prior notice to Subscribers and the City of the anticipated service interruption; provided, however, that there shall be no minimum prior notice period, for planned maintenance that:

(a) Does not require more than two (2) hours' interruption of service; and

(b) Occurs between the hours of 1:00 a.m. and 6:00 a.m.

(G) FCC-mandated testing. Franchisee shall notify the City in advance of conducting any

proof-of-performance test required by the FCC, so that the City may observe the testing. Upon request, the City shall be provided the test results and any supporting documentation regarding the tests and testing equipment and procedures.

(H) Emergency alert system. Franchisee must install and maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert to all subscribers in the City. The system must be designed and maintained so that local officials designated by the City can activate the system remotely without the assistance of Franchisee, using a telephone and secure password or by such other technical means as the City may approve. The system must be designed and maintained so that the designated officials, from a touch-tone telephone, can activate a pre-recorded text message, and at such officials' option, an accompanying live audio voice message for up to two (2) minutes. The system must be designed so that emergency messages may be sent only to subscribers in the City of Roswell. The City and the Franchisee shall meet periodically to discuss operational procedures for use of the emergency alert system. As part of those discussions, the parties may agree on alternative capabilities and activation procedures for the emergency alert system. Subject to the foregoing, the emergency alert system should be integrated to the extent reasonably possible with other emergency alert systems the Franchisee is required to provide under federal or state law. The City acknowledges that it will not be able to override national or state alerts.

(I) Parental controls. In addition to satisfying any obligations that it has under applicable law to provide parental control devices, or otherwise block programming on the cable system, Franchisee shall ensure that any system for ordering movies or other pay-per-view programming is designed, through use of systems such as PIN number systems, to prevent children from ordering programming without parental consent.

## **Section 10. INTERCONNECTIONS**

(A) Generally. The Cable System's existing facilities and equipment, and future design changes, must be installed and managed to provide interconnections with all other cable systems and open video systems in the City, as necessary to permit the seamless exchange of any I NET and/or PEG communication whether video, data or voice across networks, subject to limitations on uses under Section 9. The City may require Franchisee to interconnect with other open video and cable systems in the City, and in communities adjoining to the City where the City determines that the interconnection of I NET or PEG access is necessary and Franchisee must interconnect on its own initiative as necessary to satisfy its PEG obligations in a timely manner. Unless otherwise permitted by the City, all interconnections shall be bi-directionally activated fiber links.

(B) Relief from Obligations. Franchisee may obtain relief from an interconnection requirement where Franchisee shows to the satisfaction of the City that it is technically infeasible to perform, and where the Franchisee proposes a reasonable alternative, in light of the purposes to be served by the interconnection. Franchisee may also obtain relief from the interconnection requirement where the interconnection requires a contract between the Franchisee and a third party (an affiliate of Franchisee is not a third party), and the third party and Franchisee are unable to agree upon interconnection terms. In such a case, Franchisee must promptly notify the City that it has been unable to reach an interconnection agreement; must present the interconnection agreement that it proposed and any proposal by the third party; and must explain the reasons why the parties have been unable to reach

agreement. The City will then assist in negotiations with the other cable system or open video system provider in securing an arrangement acceptable to Franchisee.

## **Section 11. SUBSCRIBER NETWORK CHANNELS AND FACILITIES FOR PEG USE.**

(A) Generally. During the Franchise term, Franchisee shall provide PEG Channels on the lowest level of service made available to any subscriber; alternatively, if program choices are selected by a menu, PEG programming choices must be displayed equally as prominently as commercial programming choices offered by Franchisee if the Franchisee has editorial control over the menu. It is the responsibility of the PEG channel operators to timely provide in the appropriate format information that it wishes to have displayed on the menu.

(B) Management and Allocation of Channels. The City may designate Designated Access Providers; Franchisee may designate Channels provided under Section 10 for Public, Education, Government or combined PEG use. Nothing herein shall prevent the Designated Access Provider from allowing PEG capacity designated for a particular PEG use to be used for other PEG purposes.

(C) Analog/Digital Channels.

(1) Franchisee agrees to provide up to three PEG Channels for the City's use in whatever combination of Public Access, Educational and Governmental use the City determines best. The City may allocate programming from all three categories of PEG in a single Channel at its discretion. Though there is no timeline for delivering Channels, the City agrees that it will not request a second PEG Channel until the first Channel is unable to accommodate additional new programming. The third Channel will be allocated in the same manner.

(2) The Channels must be capable of supporting the transmission of a standard video signal of a quality comparable to commercial signals carried on the Subscriber Network in the same format. Franchisee must carry the entire PEG signal (except for any vertical blanking interval) and deliver it to the Subscriber so that it is viewable by all Subscribers, whether they receive digital, or analog service, or a combination, without the need for any equipment other than that the Subscriber requires to receive the level of Cable Service it has chosen..

(3) When the lowest level of Cable Service is delivered in digital format, Franchisee's obligation to provide any PEG channels on its analog lineup shall end, and the PEG channels at that time being delivered in analog format will be replaced by an equal number of digital channels.

Franchisee shall not be required to supply digital decoders to any Subscriber not otherwise authorized to receive digital service from Franchisee.

(4) Conversion to Digital. The cost of the equipment required to provide a digital PEG signal feed, and to compress the digital PEG signals to deliver them to Subscribers, will be borne by the City if the City opts to use digital PEG Channels before all other basic service programming is delivered in a digital format. In this instance, the City will also be responsible for digital compression costs. It may implement any digital compression ratio compatible with the technical requirements of Franchisee's Cable System. The City shall take no action causing Franchisee to be unable to satisfy the performance requirements specified by the Franchise.

(5) Description of Digital PEG Channels. Each digital PEG Channel must be capable of transmitting at the compression ratio comparable to that used for delivery to Subscribers of the majority of Franchisee's video programming services transmitted using digital compression. Nothing

herein shall prevent the parties from agreeing to a different compression ratio. Each digital PEG Channel must be capable of transmitting a compressed video programming signal. The City can use each Channel to deliver two separate signals, one single signal, or any combination of signals.

(E) Limitations on Use. PEG channels shall not be used to cablecast commercial programming, paid advertising, or promotional material unrelated to the specific programming purpose. PEG Channels may not be leased or assigned to third parties. The parties do not intend to limit sponsorship announcements comparable to those that might be carried on a noncommercial broadcast (e.g., PBS) station, or to prevent Schools from charging course fees, and then delivering the course via the PEG Channels; or to solicit financial support for the provision of PEG Access by Designated Providers and for charitable, educational or governmental purposes.

(F) Transmission Quality of PEG Channels. Franchisee shall ensure that the transmission quality for each PEG Channel delivered over the Subscriber Network will meet or exceed applicable FCC signal quality requirements, provided that interference and distortion are prevented and that the level of quality is equal to that the Cable System's commercial channels but in no case better than the quality of the signal delivered to the Cable System by the PEG operators.

(G) Upstream Capacity for PEG Use.

(1) Franchisee shall provide and maintain an activated dedicated bi-directional, fiber-optic link between its headend and a PEG Access Center Studio at a location to be designated by the City. Franchisee shall provide at least the amount of activated capacity on the link so that the Studio can program each activated Access channel on the Subscriber Network and the additional PEG Use channels simultaneously by sending a feed to the headend that Franchisee can connect to the appropriate Access Channel or to the interconnect. Franchisee will be responsible for placing the signals sent onto the proper Access Channel or interconnect. However, the City agrees that such PEG Access Center Studio shall be within 1 aerial mile of Franchisee's headend.

(2) Franchisee will also provide sufficient fiber capacity from the PEG Access Center Studio to City Hall. The City agrees that such PEG Access Centers shall be within 2500 feet of City Hall.

(3) The City may add equipment necessary so that it can transmit more signals to and from the I-Net. However, the cost of this additional equipment is the City's responsibility.

(4) If the headend is moved or replaced, Franchisee shall transfer the fiber-optic link(s) to the new location (including, without limitation, moving terminal equipment and splicing fiber, as necessary).

(H) Cable outlets for educational and government facilities.

(1) Franchisee shall, without charge, and except where limited herein, provide upon request the following to non-residential, Title I funded RISD school buildings, non-residential City municipal government buildings and a PEG Access Studio within Franchisee's Franchise Area not requiring a line extension or a drop in excess of 125 feet:

(a) One (1) activated subscriber network service drop and outlet;

(b) Basic Cable Service and the channels on the most widely subscribed to satellite tier offered on the Cable System (except where programming related contracts preclude it) to the outlet provided above in (a);

(c) Cable modem service to each public library operated by the City (if and when cable modem service is provided by Franchisee in that locale) and City Hall. Franchisee shall prepare a

plan to provide discounted cable modem service to any other City municipal government building designated by the City during the term of this Franchise; and,

(d) The terminal equipment necessary to receive the services listed in subparagraphs (a)-(c) at the outlet provided above in (a).

(2) The City or school may itself extend video service lines from the Franchise provided drop to additional City or school outlets within the same building, but service will not be provided to any residential quarters. Franchisee shall not be responsible for signal leakage or the signal quality at any additional outlet. Franchisee also will install such wiring upon request, at its regular hourly service charge for labor and costs of materials. Franchisee is responsible for delivering the services provided for in (1)(b) above, within applicable FCC signal quality standards, to Franchisee's installed outlet at the location. However, Franchisee is not responsible for signal quality or leakage at any outlet beyond that which it installs pursuant to (1)(a) above. If a location adds multiple outlets, it is responsible and must pay for any additional equipment and facilities required to make them operational.

(3) The City shall take reasonable precautions to prevent any use of the Franchisee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchisee shall not be required to provide an outlet to any buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installation.

## **Section 12. OPERATION AND REPORTING PROVISIONS.**

(A) Right to inspect and copy. The City shall have the right to inspect and copy books and records: related in whole or in part to the construction, operation or repair of the Cable System and reasonably necessary for the City to monitor compliance with the terms of this Ordinance or applicable law; or reasonably necessary to the exercise of any right or duty of the City under the same. Franchisee is responsible for maintaining control over books and records related in whole or in part to the construction, operation, or repair of the Cable System. It is responsible for producing these records within its care, custody or control upon the City's request for the City's inspection within the City limits of the City. The records that Franchisee must produce shall include, but are not limited to records used to compute Franchise fees, and other records related to compliance with any provision of this Franchise. However, nothing herein gives the City the right to inspect or copy Franchisee's confidential financial and/or proprietary information nor access to Franchisee's electronic data systems. Books and records must be maintained for a period of three years, except that Franchisee may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The City agrees it will not audit more than once every two years.

(B) Reports. Any report required hereunder may be prepared in a manner consistent with the Franchisee's regular records at the level where normally kept.

(1) The City Manager may from time to time (but not more often than once per year) direct Franchisee to prepare reports reasonably necessary to the City's monitoring compliance with the terms of this Franchise or applicable law and to submit those reports by a date certain, allowing reasonable time for preparation, in addition to those otherwise required.

(2) Within 30 days of a request by the City Manager, but not more than two times per year,

Franchisee shall submit a report to the City containing the following information:

(a) The number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the Subscriber base; and

(b) The total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on at least three signals, affecting five or more Subscribers.

(3) Unless an exemption is granted by the City Manager, no later than 90 days after the end of its fiscal year, Franchisee shall submit the following information, except that the information required by Section 12(C)(3), below, need only be provided where there has been a change from the preceding year:

(a) An audited or certified revenue report from the previous calendar year for the Cable System, and a certified statement setting forth the computation of Gross Revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) Gross Revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from Gross Revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.

(b) A report showing, for each applicable customer service standard, the Franchisee's performance with respect to that standard for each quarter of the preceding year. In each case where Franchisee concludes it did not comply fully, the Franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and nature of the written customer service complaints received and an explanation of their dispositions.

(c) An ownership report, indicating all persons who at the time of filing control or own an interest in the Franchisee of 10% or more.

(4) Within 10 days of their receipt or (in the case of documents created by the Franchisee or a person acting on its behalf) filing, Franchisee shall provide the City:

(a) Notices of deficiency or forfeiture related to the operation of the Cable System;

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly; and

(c) Copies of all petitions, applications and communications in respect to any matters affecting the Cable System submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction.

(C) Other Records Required. Unless the City Manager specifically waives the requirement in writing, Franchisee shall at all times maintain:

(1) Records of all written complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the Franchisee's construction, operations or repair activities;

(2) Records of outages known to the Franchisee, their cause and duration;

(3) Records of service calls for repair and maintenance indicating the nature of the call for service, the date and time service was requested, the date of acknowledgment and date and time



service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;

(4) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;

(5) Records sufficient to show whether the Franchisee has complied with each FCC customer service standard that applies to it.

(D) Exemptions. The City Manager may exempt Franchisee from its obligations under Section (C) if the City reasonably determines that the requirement would be unduly burdensome or unnecessary, and that City and Subscriber interests may be adequately protected in some other manner.

(E) Uses of system. Without limiting the foregoing, upon request, Franchisee must advise the City of all services it provides via the Cable System at least thirty (30) days prior to offering such services (the term "services" for purposes of this Section, would include, without limitation, the provision of dark fiber for entertainment and other purposes, such as data transmission, local area networks, and voice transmission; and to the extent known, the services that are provided by third parties via the Cable System).

(F) Retention of records; relation to privacy rights. Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided to the City or that may be requested by the City under applicable law or this Franchise, including by providing appropriate subscriber privacy notices. Nothing in this Section shall be read to require Franchisee to violate 47 U.S.C. § 551 or other applicable law governing privacy. Franchisee shall be responsible for redacting any data that state or federal law prevents it from providing to the City. Records shall be kept for at least five (5) years, except that service call logs may be retained for three (3) years, so long as the information contained therein is reflected in other documents.

**Section 13. CUSTOMER SERVICE STANDARDS.** Franchisee shall meet or exceed the cable television customer service standards adopted by the state (if any) or the FCC.

**Section 14. RATE REGULATION.** Upon certification by the Federal Communications Commission, the City may regulate Franchisee's rates and charges related to its lowest level of service, and order refunds of unreasonable rates charged, to the extent that it is permitted by applicable law. All rates that are regulated by the City must be reasonable and, except as applicable law provides otherwise, can only be established or changed with the prior approval of the City. Failure of the Franchisee to comply with valid rate orders issued by the City shall constitute a material breach of the Franchise, subjecting the Franchisee to liquidated damages as set forth in Section 19 of the Cable Ordinance, unless a Stay is ordered by the FCC.

**Section 15. INSURANCE; SURETY; INDEMNIFICATION.**

(A) Insurance.

(1) General conditions. Except as this Franchise may otherwise provide, Franchisee shall procure and maintain in full force and effect during the life of its Franchise, such insurance as is required in this Section 15 below. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and they shall be in a form reasonably satisfactory to City and

properly filed and approved by the Superintendent of Insurance, State of New Mexico. Franchisee shall furnish City a minimum of seven copies of certificates of required insurance. All certificates of insurance (or policies) shall provide that 30 days' written notice be given to the City of Roswell Risk Manager before a policy is cancelled, materially changed or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers' compensation, the City shall be a named additional insured. All coverages shall be primary with respect to operations provided. The certificates of insurance and endorsements for each policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates and other required proofs shall be filed within 30 days of the issuance of this Franchise, once a year thereafter, and whenever there is any change in coverage.

(B) No work without insurance. Franchisee (or those acting on its behalf) shall not commence construction or operation of the Cable System without first obtaining insurance in amounts and of a type satisfactory to City. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way or on public property. If the Franchisee, its contractors, or subcontractors do not have the required insurance, City may order such persons to stop operations until the insurance is obtained and approved.

(C) Work of subcontractors. If any part of the construction, operation or repair of the Cable System is subcontracted, Franchisee shall:

(1) Include any and all subcontractors in his insurance policies; or

(2) Require the subcontractor to secure insurance to protect himself against all hazards enumerated herein which are not covered by Franchisee's policies.

(D) Approval of insurance. Neither approval nor failure to disapprove certificates, policies or the insurance by City shall relieve Franchisee or any sub-Franchisee of full responsibility to maintain the required insurance in full force and effect.

(E) Commercial general liability insurance including automobile.

(1) Franchisee shall procure and maintain during the life of a Franchise a comprehensive commercial general liability and automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence and in the aggregate. Said policies or insurance must include coverage for all operations performed for City by Franchisee, including, but not limited to, coverage for collapse (C), explosion (X), and underground (U) liability coverage, coverage for the user of all owned, non-owned, hired automobiles, vehicles, and other equipment both on and off work, and contractual liability coverage which shall specifically insure the indemnification provisions of this Ordinance and any Franchise.

(2) The above requirements shall include, but shall not be limited to, protection against:

(a) Damage to, or destruction of, public and private property including telephone conduit, telegraph conduit, power conduit, telephone signal cable, fiber optics cable, television cable, computer cable, fire alarm circuits, gas mains, gas service connections, sanitary sewers, sewer, house or building connections, water mains, water service connections, steam lines, petroleum products pipe lines, storm drains, storm inlet lines, including all appurtenances thereto while located below the surface of the ground, including injury or death, to person or persons caused by Franchisee's operations, including blasting and trenching-backfilling-tamping with or without the use of

mechanical equipment; and

(b) The collapse of, or structural damage to, a building, house or structure, including power, telephone, telegraph, fire alarm, and street-light poles, curb and gutter and sidewalk, on public or private property, and destruction of, or damage to, other public and private property resulting therefrom, including injury or death to person or persons caused by Franchisee, including but not limited to as a result of Franchisee's operations in the removal of other buildings, structures, including their supports, trees and utility poles, or by excavation, including blasting, and trenching-backfilling-tamping with or without use of mechanical equipment. "Other public and private property" as used herein shall include lawns, plants, flowers, trees, fences, yards, walls, etc.

(F) City's protective public liability insurance.

(1) Franchisee shall procure and maintain during the life of a Franchise, a City's protective public liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence and in the aggregate, or Franchisee may provide City with evidence of insurance with excess limits in amounts not less than \$1,000,000.

(2) The policy will be written with City as the named additional insured and will provide coverage for City's and its employees while acting within the scope of their duties against all claims arising out of or in connection with the work to be performed.

(3) In lieu of Section 17 F (1) and (2), the City may accept equivalent coverage if approved by the City's Risk Manager.

(G) Workers' compensation insurance. Franchisee shall comply with the provisions of the Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Franchisee shall procure and maintain during the life of a Franchise, complete workers' and employer's liability insurance in accordance with New Mexico law and regulations. Such insurance shall include coverage permitted under Section 52-1-10 NMSA 1978, for safety devices. With respect to workers' compensation insurance, if Franchisee elects to be self-insured, it shall comply with the applicable requirements of law. If any portion of the construction, operation or repair of the Cable System is to be subcontracted, Franchisee shall require the subcontractor similarly to provide such coverage (or qualify as a self insured) for all latter's employees to be engaged in such work. Franchisee shall save harmless City, its officers, agents and employees from any claims or actions occasioned by failure of Franchisee to comply with the provisions of this subparagraph. It is agreed that with respect to all workers' compensation insurance, the Franchisee and its insurer shall waive any right of subrogation it may acquire against the City, its officers, agents and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee arising out of the performance of a Franchise, unless caused by the gross negligence or malfeasance of the City, its officers, agents and employees.

(H) Alterations in limits. This Franchise shall be interpreted to permit the City to require the Franchisee to increase its insurance limits, or obtain additional types of insurance should the City determine in good faith that there are significant increased risks to the City or its citizens based on the Franchisee's actions, by such time as reasonably may be specified by the City.

(I) Ratings. Franchisee's insurer shall have no less than an "A-" policyholder's rating and a financial rating of at least Class XI in accordance with the Best's rating current at the time purchased, unless

specifically waived in writing by the Risk Manager of the City.

(J) No contribution. Any insurance or self insurance maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

(K) The insurance requirements are material terms of this Franchise cannot be changed without the mutual agreement of the City and Franchisee. Franchisee shall have insurance in place as herein required by the effective date of this Franchise, and shall, upon request, provide proof of such insurance reasonably satisfactory to the City prior to the effective date of the Franchise grant.

(l) Indemnification. To the extent permitted by applicable law, Franchisee agrees to indemnify and hold harmless City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature not resulting from the actions of the City, its trustees, elected and appointed officers, agents and employees, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system, the conduct of Franchisee's business in the City, or the Franchisee's enjoyment or exercise of its franchise.

(2) The City will notify the Franchisee in writing of its duty to indemnify in any case subject to the indemnity in which the Franchisee is not a named defendant or plaintiff. The Franchisee will employ competent counsel, reasonably acceptable to the City attorney.

## **Section 16. PERFORMANCE GUARANTEES AND REMEDIES.**

### **(A) Construction Performance Bond.**

(1) Franchisee shall obtain a performance bond in the amount of \$25,000 by the effective date of the franchise.

(2) The performance bond shall secure the faithful performance of all obligations under this Franchise.

(3) The bond shall provide that, in the event Franchisee fails to complete any Cable System upgrade, other work in the public Rights-of-Way required by this Franchise, in a safe, timely, and competent manner, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, or the cost of completing or repairing the Cable System upgrade or other work in the public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

(4) The performance bond shall provide that it shall be forfeited to the City if:

- (a) The Franchisee abandons the Cable System; or
- (b) The Franchise is revoked for cause.

(5) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the reasonable approval of the City; and shall contain the following endorsement: "this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(B) Material term. The required construction performance bond is a term of this franchise.

(C) Relation to insurance and indemnity requirements. Recovery by the City of any amounts under insurance, the construction performance bond or otherwise does not limit the Franchisee's duty to indemnify the City in any way; nor shall such recovery relieve the Franchisee of its obligations under the franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

## **Section 17. CONTINUITY OF SERVICE.**

(A) It is the right of each subscriber in the Franchisee's Franchise Area to receive all available Cable Service offered by the Franchisee as long as the subscriber's financial and other obligations to the Franchisee are satisfied.

(B) The Franchisee shall make its best efforts to provide all Subscribers with continuous uninterrupted Cable Service. At the City's request, the Franchisee shall operate its system for a temporary period (the "transition period") following the termination of its franchise or any transfer as necessary to maintain Cable Service to subscribers, and shall cooperate with the City to assure an orderly transition from it to another entity. The transition period shall be no longer than the reasonable period required to select another entity and in no event shall be longer than twelve (12) months, unless extended by mutual consent of Franchisee and the City. During the transition period, the Franchisee will continue to be obligated to comply with the terms and conditions of this franchise and applicable laws and regulations, and will be deemed to have the necessary authorization required from the City to enable it to provide Cable Service.

(C) If the Franchisee abandons its Cable System during the franchise term or any transition period, or fails to operate its Cable System in accordance with the terms set forth in Section 16 above, the City, at its option, may operate the Cable System or designate another entity to operate the Cable System temporarily until the Franchisee agrees to restore and restores continuous Cable Service in compliance with the franchise until the franchise is revoked and a new entity selected by the City is providing Cable Service.

(D) The City shall be entitled to exercise its rights under Section 16 if the:

(1) The Franchisee fails to provide Cable Service in accordance with its franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless such failure is due to force majeure or the City authorizes a longer interruption of service; or

(2) The Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its franchise over a substantial portion of the Franchise Area.

(E) Rights upon franchise termination or revocation. If the City revokes the franchise or the franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this franchise or under applicable law:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under applicable law.

(2) The City, by City Council resolution, may acquire ownership or effect a transfer of the Cable System at fair market value if the franchise is revoked for cause in accordance with the Cable

Ordinance, at an equitable price. The terms "equitable price" and "fair market value" shall be interpreted in accordance with 47 U.S.C. § 547.

(3) Section 17(E)(2) does not apply to an abandonment. If a Cable System or any part thereof is abandoned by Franchisee, the City may require the Franchisee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit. In the event the City acquires title, Franchisee shall have no further liability for the Cable System.

## **Section 18. ENFORCEMENT AND REMEDIES: REVOCATION.**

(A) Right to revoke; generally.

(1) The City Council may revoke this Franchise if it finds that Franchisee has committed a material breach of this Franchise or repeatedly failed to comply with this Franchise; has defrauded or attempted to defraud the City or Subscribers; or has attempted to evade the requirements of this Franchise.

(2) Before revoking a Franchise, the following must have occurred:

(a) The City Manager must give Franchisee notice of an alleged default in performance (which notice will describe the nature of an alleged violation or breach) and a 30 calendar day opportunity to cure or such additional time as is reasonably necessary (the "cure period"); except that an opportunity to cure is not required where the defect in performance is due to willful misconduct or fraud or attempted fraud, if Franchisee or any of Franchisee's officers or directors is convicted of a felony in violation of criminal law which involves or affects a material provision of this Franchise, or is part of a pattern of substantial violations where the Franchisee has already had notice and opportunity to cure. The City may extend the cure period for up to 30 additional days if Franchisee has diligently attempted to correct the alleged default.

(b) Not sooner than 30 calendar days after the City Manager notifies the Franchisee of the default (or such longer period as may be required to encompass an extended cure period), the City Council shall hold a public hearing to consider whether the Franchise should be revoked, at which time the Franchisee and the public will be given an opportunity to be heard and Franchisee to present evidence for consideration by the City Council.

(3) Following the close of the public hearing the City Council may determine whether to revoke the Franchise. If the Franchisee was entitled to an opportunity to cure a default, the Franchise may not be revoked if the default was fully cured during the cure period, including by payment of all damages and penalties owed. If the City Council determines to revoke the Franchise, it will issue a written decision setting forth the reasons for its decision.

(4) A copy of such decision will be transmitted to the Franchisee.

(B) Rights upon Franchise termination or revocation. If the City revokes the Franchise or the Franchise otherwise terminates, the City shall have the following rights, in addition to the rights specified in this Franchise or under applicable law:

(1) The City may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense, subject

to any right of abandonment that may be provided for under applicable law.

(2) The City, by City Council resolution, may acquire ownership or effect a transfer of the Cable System in accordance with 47 U.S.C. § 547.

(3) Section 18 (B)(2) does not apply to an abandonment. If a Cable System or any part thereof is abandoned by Franchisee, the City may require the Franchisee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

(C) Termination in the event of bankruptcy. This Franchise will terminate automatically by force of law 180 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 180 day period, if:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver or trustee has fully complied with the terms and conditions of this Franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of Franchisee, the City may revoke the Franchise following a public hearing before the City Council, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless:

(a) The City has approved the transfer of the Franchise to the successful bidder; and

(b) The successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of the Franchise.

(D) Effect of termination or forfeiture. Upon termination or forfeiture of this Franchise, whether by action of the City as provided above, or by passage of time, the City may do one or a combination of the following:

(1) Franchisee must, should the City so direct, stop using the Cable System for the purposes authorized by the Franchise.

(2) The City may require the former Franchisee to remove all or a portion of its facilities and equipment at the former Franchisee's expense, subject to any right Franchisee may have to abandon property in place. If the former Franchisee fails to remove its property within a reasonable period of time, the City may have the removal done at the former Franchisee's and/or surety's expense.

(3) The City, by resolution of the City Council, may acquire ownership or effect a transfer of all or a portion of the Cable System in accordance with 47 U.S.C. 547. Franchisee shall execute such deeds and other papers as are necessary to transfer ownership to the City, free and clear of all encumbrances. Determination of fair market value shall be established by appraisal, with one appraiser appointed by the City, one by the Franchisee, and a third by the two appraisers.

(4) Notwithstanding the foregoing, the City may not, pursuant to this section, issue an order that violates 47 U.S.C. § 541(b)(3)(c).

## **Section 19. MISCELLANEOUS PROVISIONS.**

(A) Compliance with laws. The Franchisee shall comply with all applicable federal, state and local laws and regulations as they become effective, unless otherwise stated herein.

(B) Governing law. This franchise shall be governed and construed in accordance with the statutes and laws of the state of New Mexico.

(C) No pledging of City's credit. Under no circumstances shall Franchisee have the authority or power to pledge the credit of City or incur any obligation in the name of City. Franchisee shall save and hold harmless the City, its City council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Franchisee under this franchise.

(D) Venue. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the Fifth Judicial District Court, State of New Mexico or, where otherwise appropriate, exclusively in the United States District Court for the district of New Mexico.

(E) Force majeure. The Franchisee shall not be deemed in default with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond the Franchisee's control or the unforeseeable unavailability of labor or materials. The acts or omissions of affiliates are not beyond the Franchisee's control, and the knowledge of affiliates shall be imputed to Franchisee. The franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its franchise without unduly endangering the health, safety and integrity of the Franchisee's employees or property, or the health, safety and integrity of the public, public Rights-of-Way, public property, or private property.

(F) Notices. Unless otherwise expressly stated herein, notices required under this franchise shall be mailed first class, postage prepaid, or sent overnight delivery to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Franchisee shall be mailed to:

Cable One, Inc.  
General Manager  
2005 S. Main Street  
Roswell, New Mexico 88203

Copies of any notice to the Franchisee must also be given to:

Vice President and General Counsel  
Cable One, Inc.  
210 E. Earll Drive,  
Phoenix, AZ 85012

(2) Notices to the City shall be mailed to:

Mayor  
City of Roswell



P.O. Box 1838  
Roswell, New Mexico 88202-1838

Copies of any notice to the City must also be given to:

City Attorney

P.O. Box 1838

Roswell, New Mexico 88202-1838

(G) Calculation of time. Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

(H) Time of essence; maintenance of records of essence. In determining whether the Franchisee has substantially complied with its franchise, the parties agree that time is of the essence to this franchise. The maintenance of records and provision of reports in accordance with the franchise is also of the essence to this franchise.

(I) Captions. The captions and headings of this franchise are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this franchise.

**Section 20. REPEALER.** City Ordinance Number 04-04 is hereby repealed.

**Section 21. SEVERABILITY CLAUSE.**

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be illegal, unconstitutional, invalid or unenforceable by a court, agency or legislature of competent jurisdiction, said provision shall be considered a separate, distinct, and independent part of this Franchise, and such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of this agreement is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this franchise. If the parties are unable to agree to a modification of this franchise within sixty (60) days, either party may with ninety (90) days prior notice, terminate or shorten the franchise term; or resort to litigation to seek any available equitable relief; or do both. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within fourteen (14) days of a request by such other party that it enter into negotiations, or else the materiality claim is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding the dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

**Section 22. COMPILATION**

This Ordinance shall be incorporated in and made part of the Ordinances of Roswell.

**Section 23. EFFECTIVE DATE**

This Ordinance shall take effect five (5) days after publication.

PASSED, ADOPTED, SIGNED and APPROVED the 14<sup>TH</sup> day of April, 2016.

CITY SEAL

\_\_\_\_\_  
Dennis Kintigh, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Coll, City Clerk

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 6.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Legal

**CONTACT:** William Zarr

**CHAIR:** Jason Perry

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**ACTION REQUESTED:**

Proposed Ordinance 16-07 - To hold a public hearing and vote on the adoption of Proposed Ordinance 16-07 Convention Center Fees. (Perry/Zarr)

**BACKGROUND:**

Proposed Ordinance No. 16-07 will amend Ordinance No. 13-09 of the Roswell City Code, by renumbering the ordinance as part of the Roswell City Code, and also by amending the ordinance to improve the overall form of the ordinance.

In its present form, the ordinance simply reiterates the state enabling statute. The proposed amendments will make the ordinance more specific to the City of Roswell, to better reflect the intention of the governing body when Ordinance No. 13-09 was adopted.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

The City Attorney has reviewed Proposed Ordinance No. 16-07.

**BOARD AND COMMITTEE ACTION:**

The Legal Committee recommended advertising Proposed Ordinance No. 16-07 at its meeting held on February 25, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of approval of Proposed Ordinance 16-07 following public hearing on said proposed ordinance.

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**Attachments**

Proposed Ordinance 16-07 Convention Center Fees

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**PROPOSED ORDINANCE NO. 16-07**

**AN ORDINANCE AMENDING ORDINANCE NO 13-09 BY RENUMBERING THE SECTIONS OF SAID ORDINANCE AS PART OF THE ROSWELL CITY CODE AND AMENDING VARIOUS PROVISIONS OF SAID ORDINANCE**

**WHEREAS**, it appears that when the City Council adopted Ordinance No. 13-09 and imposed the Convention Center Fee pursuant to the authority of NMSA 1978 §5-13-1 et seq., it adopted what is essentially a version of the enabling legislation as the City's ordinance; and

**WHEREAS**, the amendments contained in this Ordinance will improve the current ordinance consistent with the intention of the Governing Body when it enacted Ordinance No. 13-09 to establish the convention center fee:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Section 1 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-70 of the Roswell City Code, and amending that section to read as follows:

Section ~~1~~ 23-70. ~~Short Title~~.

This article may be cited as the "City of Roswell Convention Center Financing ~~Act~~ Ordinance."

SECTION 2. Section 2 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-71 of the Roswell City Code, and amending that section to read as follows:

Section ~~2~~ 23-71. Definitions.

{The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:}

City means the City of Roswell.

Convention center includes a civic center or similar facility intended for public use owned or operated by the City.

Convention center fee means the fee imposed by ~~a local governmental entity~~ the City pursuant to the Convention Center Financing Act on vendees for the use of lodging facilities.

Convention Center Financing Act refers to the statutes set forth in NMSA 1978 Chapter 5, Article 13.

~~Local government entity means a qualified municipality or a county authorized by the Convention Center Financing Act to impose convention center fees.~~

Lodging facility means a hotel, motel or motor hotel, a bed and breakfast facility, an inn, a resort, or other facility offering rooms for payment of rent or other consideration located within the City.

~~Qualified municipality means an incorporated municipality.~~

Room means a unit of a lodging facility, such as a hotel room.

Vendee means a person who rents or pays consideration to a vendor for use of a room in the City.

Vendor means a person or the person's agent who furnishes rooms for occupancy for consideration in the City.

SECTION 3. Section 3 of Ordinance No. 13-09 is hereby deleted in its entirety

~~Section 3. Authorized local governmental entities.~~

~~(a) The following local governmental entities are authorized to impose convention center fees:~~

~~(1) A qualified municipality if the governing body of the qualified municipality has enacted an ordinance to impose a convention center fee; and~~

~~(2) A county in which a qualified municipality is located, provided that:~~

~~a. A qualified municipality within the county has enacted an ordinance to impose a convention center fee;~~

~~b. The board of county commissioners of the county has enacted an ordinance to impose a convention center fee;~~

~~c. The qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required in the Convention Center Financing Act; and~~

~~d. The fee shall only apply to lodging facilities located within 20 miles of the corporate limits of the qualified municipality.~~

~~(b) Two qualified municipalities may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect revenue from a convention center fee and to expend the revenue as required by the Convention Center Financing Act if the municipalities:~~

~~(1) Are located in the same county within 20 miles of the corporate limits of each other; and~~

~~(2) Have each enacted an ordinance to impose a convention center fee.~~

SECTION 4. Section 4 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-72 of the Roswell City Code, and amending that section to read as follows:

Section 423-72. Imposition of convention center fee—Use of proceeds.

- (a) ~~A local governmental entity may impose by ordinance a fee~~ is hereby imposed on the use of a room within a lodging facility within the ~~local governmental entity City~~. ~~The fee may which shall~~ be referred to as the "convention center fee." The amount of the convention center fee shall ~~be not exceed~~ is set at \$2.50 per room for each day the room is occupied by a vendee.
- (b) ~~A~~ The convention center fee imposed pursuant to this section shall be reviewed by the City's governing body of the local governmental entity annually. The local governmental entity shall adjust the amount of the convention center fee by ordinance to result in an amount of revenue equivalent to the following percentage of the actual operating and maintenance costs for the preceding fiscal year of the convention center to which the revenue from the fee is dedicated pursuant to subsection (e) of this section:
- (1) Through fiscal year 2025, 120%;
  - (2) For fiscal year 2026, 100%; and
  - (3) The fiscal year 2027 and subsequent fiscal years, a percentage that is 2% less than the prior fiscal year.
- (c) ~~If convention center fees imposed are subject to the provisions of a joint powers agreement between two local governmental entities, the local governmental entities that are parties to the joint powers agreement shall jointly determine changes in the rate of convention center fees to be imposed.~~
- (d) ~~A qualified municipality~~ The City shall not decrease the convention center fee while revenue bonds to which the revenue of the convention center fees is pledged remain outstanding.
- (e) ~~A local governmental entity shall dedicate~~ The revenue from the convention center fee shall be dedicated as provided in this subsection at the time that the ordinance imposing the fee is enacted. ~~A local governmental entity that is a party to a joint powers agreement regarding the imposition of a convention center fee shall enact an ordinance that includes the provisions stated in the joint powers agreement and limit the use of the revenue limited to the following:~~
- (1) Costs of acquisition of land for and the design, construction, equipping, furnishing, landscaping, operation, and maintenance of a convention center located within the ~~qualified municipality~~ City;
  - (2) Payments of principal, interest, or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Convention Center Financing Act; and
  - (3) Costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Convention Center Financing Act are made and that no more than 5% of the revenue collected in any fiscal year shall be used to pay administration costs.

SECTION 5. Section 5 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-73 of the Roswell City Code, and amending that section to read as follows:

Section ~~5~~23-73. Exemptions.

The convention center fee shall not apply:

- (1) If a vendee:
  - a. Has been a permanent resident of the lodging facility for a period of at least 30 consecutive days; or
  - b. Enters into or has entered into a written agreement for a room at lodging facility for a period of at least 30 consecutive days;
- (2) If the local governmental entity by ordinance exempts lodging facilities whose maximum daily room charge is less than the amount stated in the ordinance;
- (3) To rooms at institutions of the federal government, the state or any political subdivision thereof;
- (4) To rooms at religions, charitable, educational, or philanthropic institutions or other nonprofit organizations, including rooms at summer camps operated by such institutions;
- (5) To clinics, hospitals, or other medical facilities;
- (6) To privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill; or
- (7) If the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within ~~local governmental entities that have imposed a convention center fee~~ the City, regardless of the number of rooms available for occupancy.

SECTION 6. Section 6 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-74 of the Roswell City Code, and amending that section to read as follows:

Section ~~6~~23-74. Collection of convention center fee.

- (a) A vendor providing rooms ~~in a local governmental entity that has imposed a convention center fee~~ shall collect the proceeds on behalf of the ~~local governmental entity~~ the City and shall act as a trustee for the fees collected.
- (b) The convention center fee shall be collected from vendees in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

SECTION 7. Section 7 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-75 of the Roswell City Code, and amending that section to read as follows:

Section ~~7~~23-75. 7-167. Audit of vendors.

~~A local governmental entity assessing a convention center fee~~ The City shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to NMSA 1978, § 3-38-17.1.

SECTION 8. Section 8 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-76 of the Roswell City Code, and amending that section to read as follows:

Section 8 ~~23-76~~. Financial reporting.

~~The chief executive officer of a local governmental entity assessing a convention center fee~~ City Manager shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

SECTION 9. Section 10 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-77 of the Roswell City Code, and amending that section to read as follows:

Section ~~10~~ 23-77. Collection of delinquencies.

- (a) ~~A local governmental entity shall by ordinance provide that a vendor is~~ shall be liable for the payment of the proceeds of convention center fees that the vendor failed to remit to the local governmental entity. Failure of the vendor to collect the fee is not cause for ~~local governmental entity the City~~ to forgive convention center fees due and owed by the vendor. ~~The ordinance shall provide for a civil penalty f~~ For each occurrence of failure to remit convention center fees, a vendor shall pay a civil penalty in an amount equal to the greater of 10% of the amount that was not duly remitted to the ~~local governmental entity City~~ or \$100.00.
- (b) ~~The local governmental entity City may bring an action in the district court of the judicial district in which the local governmental entity is located for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at the rate not exceeding 1% per month, the costs of collection, and reasonable attorney fees incurred in connection with the court action to collect the unpaid convention center fees.~~

SECTION 10. Section 11 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-78 of the Roswell City Code, and amending that section to read as follows:

Section ~~11~~ 23-78. Lien for convention center fee—Payment—Certificate of lien.

- (a) The convention center fee assessed by ~~a local governmental entity~~ the City constitutes a lien in favor of ~~that local governmental entity the City~~ upon the personal and real property of the vendor providing lodging facilities in ~~that local governmental entity the City~~. The lien may be enforced as provided in NMSA 1978, §§ 3-36-1 through 3-36-7. Priority of the lien shall be determined from the date of filing.
- (b) Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the ~~local governmental entity in which the vendor is located the City~~ the amount of any convention center fees due. Convention



center fees due the ~~local governmental entity~~ City shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

- (c) The clerk or treasurer of the ~~local governmental entity~~ the City shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the ~~local governmental entity~~ the City against any vendor pursuant to the Convention Center Financing Act Ordinance.

SECTION 11. Section 12 of Ordinance No. 13-09 is hereby deleted in its entirety.

~~Section 11. Ordinance requirements.~~

~~The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:~~

~~(1) State:~~

- ~~a. The rate of the convention center fee to be imposed;~~
  - ~~b. The times, place, and method for the payment of the convention center fee proceeds to the local governmental entity;~~
  - ~~c. The accounts and other records to be maintained in connection with the convention center fee;~~
  - ~~d. A procedure for making refunds and resolving disputes relating to the convention center fee;~~
  - ~~e. The procedure for preservation and destruction of records and for their inspection and investigation;~~
  - ~~f. Vendor audit requirements;~~
  - ~~g. Applicable civil and criminal penalties; and~~
  - ~~h. A procedure of liens, distraint and sales to satisfy those liens; and~~
- ~~(b) Provide other rights, privileges, powers, immunities, and other details relating to the collection of the convention center fee and the remittance of the proceeds thereof to the local governmental entity.~~

SECTION 12. Section 13 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-80 of the Roswell City Code, and amending that section to read as follows:

Section ~~13~~ 23-80. Revenue bonds.

- (a) Pursuant to the provisions of the Convention Center Financing Act, the City may issue R revenue bonds may be issued at any time by a qualified municipality that has imposed a convention center fee the City to defray wholly or in part the costs authorized in section 23-72(e) 7-164(e)(1) of the Convention Center Financing Act. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenue derived from:

- (1) The proceeds of the convention center fee of the ~~qualified municipality~~ City and the proceeds of the convention center fee of a local governmental entity that has entered into a joint powers agreement with the ~~qualified municipality~~ City to impose a convention center fee, the proceeds of which shall be dedicated to the payment of revenue bonds for a convention center in the ~~qualified municipality~~ City;
  - (2) A convention center to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the convention center;
  - (3) That portion of the proceeds of the occupancy tax of the ~~qualified municipality~~ City available for payment of revenue bonds pursuant to NMSA 1978, § 3-38-56B(1);
  - (4) Any other legal available revenues of the ~~qualified municipality~~ City; or
  - (5) A combination of revenues from sources designated in subsections (1) through (4) of this subsection.
- (b) The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act, and the first interest payment may be for any period authorized in the Public Securities Act.
  - (c) Except as otherwise provided in the Convention Center Financing Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of NMSA 1978, §§ 3-31-2 through 3-31-6.

SECTION 13. Section 14 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-81 of the Roswell City Code, and amending that section to read as follows:

Section 14 ~~23-81~~.Refunding bonds.

- (a) ~~A qualified municipality~~ The City, having issued revenue bonds as authorized in the Convention Center Financing Act, may issue refunding revenue bonds payable from pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the ~~qualified municipality~~ City may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.
- (b) Refunding bonds may be issued for the purpose of refinancing, paying, and discharging all or a part of outstanding bonds of any one or more outstanding bond issues:
  - (1) For the acceleration, deceleration, or other modification of the payment of the obligations, including any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;
  - (2) For the purpose of reducing interest costs or effecting other economies;
  - (3) For the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

- (4) For any combinations of the purposes specified in subsections (1) through (3) of this section.
- (c) The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in the act.
- (d) Refunding bonds for any other purpose permitted by the Convention Center Financing Act may be issued separately or issued in combination in one series or more.
- (e) Except as otherwise provided in the Convention Center Financing Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of NMSA 1978, §§ 3-31-10 and 3-31-11.

SECTION 14. Section 15 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-82 of the Roswell City Code, and amending that section to read as follows:

Section 15 ~~23-82~~. Penalties.

~~A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than \$500.00 or imprisonment of not more than 90 days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.~~

Any person who is a vendor under the provisions of this Ordinance and who fails to pay the fees or to remit the proceeds to the City shall be punished by a fine not to exceed \$500, or by a term of imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment.

SECTION 15. Section 9 of Ordinance No. 13-09 is hereby amended by renumbering said section as a new section 23-83 of the Roswell City Code, and amending that section to read as follows:

Section 9 ~~23-83~~ Enforcement.

- ~~(a) An action to enforce the Convention Center Financing Act may be brought by:
 
  - (1) The attorney general or the district attorney in the county of jurisdiction; or
  - (2) A vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.~~
- ~~(b) A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Convention Center Financing Act.~~
- ~~(c) The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Convention Center Financing Act.~~

The provisions of this Convention Center Financing Ordinance may be enforced as provided under NMSA 1978 §5-13-9.

SECTION 16. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 17. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 18. This ordinance shall be effective after five (5) days following its publication as required by law.

Underscoring indicates addition to existing Code section.

~~Strike through~~ indicates delete of an existing Code section.

PASSED, ADOPTED, SIGNED and APPROVED the 14<sup>th</sup> day of April, 2016.

CITY SEAL

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Dennis Kintigh, Mayor

ATTEST:

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Sharon Coll, City Clerk

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 7.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Public Safety

**CONTACT:** Mike Mathews

**CHAIR:** Art Sandoval

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**ACTION REQUESTED:**

Consider approval of purchase of Personal Protective Equipment (PPE), i.e. bunker gear, for the Fire Department.

**BACKGROUND:**

Funds are via the State Fire Marshal's Fire Grant Council.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Consider approval of expenditure of \$79,134 for firefighting personal protective equipment.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Public Safety Committee recommended approval of the purchase of Personal Protective Equipment, i.e. bunker gear, for the Fire Department at their meeting on April 4, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of purchase of Personal Protective Equipment, i.e. bunker gear, for the Fire Department.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 8.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Legal

**CONTACT:** William Zarr

**CHAIR:** Jason Perry

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**ACTION REQUESTED:**

Consider approval to authorize the Old Dog Brotherhood, Roswell Chapter, to renew their current lease agreement on Building No. 734.

**BACKGROUND:**

Old Dog Brotherhood, Roswell Chapter leases the building for the purpose of meetings and vehicle maintenance. 2,484 square feet. New rent amount is \$215 monthly; \$2,580 annually. Rent adjustment is 85.34%. Old Dog Brotherhood, Roswell Chapter has been a customer since April 2011.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Old Dog Brotherhood, Roswell Chapter, new rent amount is \$215 monthly; \$2,580 annually. Rent adjustment is 85.34%. Term: May 1, 2016 through April 30, 2017.

**LEGAL REVIEW:**

The City Attorney has reviewed the requested actions.

**BOARD AND COMMITTEE ACTION:**

The Legal Committee recommended the City Council authorize approval at their March 24, 2016 meeting.

**STAFF RECOMMENDATION:**

Airport Staff recommends the approval of lease agreements and lease amendments as proposed.

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**Attachments**

Old Dog Brotherhood

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# LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 14<sup>th</sup> day of April, 2016 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and OLD DOG BROTHERHOOD, Roswell Chapter, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

Building No. 734 consisting of 2,484 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The Lease term is for one (1) year, commencing on May 1, 2016 and ending April 30, 2017 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand, Five Hundred Eighty Dollars and No Cents (\$2,580.00), payable in 12 monthly installments of \$215.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$100.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to



Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. MAINTENANCE.

a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times and to keep trees, shrubbery, and grass irrigated, trimmed and attractively maintained.

b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.

c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.

7. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

8. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. EQUIPMENT AND IMPROVEMENTS.

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner



that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

#### 10. INSURANCE.

a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for the amount of insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

#### 11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and



with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. **CONDITIONS OF DEFAULT.** If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenants's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such



default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of sixty (60) consecutive days; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

15. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.



e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

16. **LEGAL FEES.** If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

17. **BANKRUPTCY.** If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

18. **USE OF THE PREMISES.**

a. Tenant shall use the Leased Premises solely for the purpose of meetings and vehicle maintenance, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell International Air Center ("RIAC").

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it has not released any hazardous materials or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration,



shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the RIAC's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of the RIAC and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. ACCESS TO/ INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant's regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

23. HOLDOVER. In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. NOTICES.

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Manager  
1 Jerry Smith Circle  
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

Old Dog Brotherhood  
2004 E. 17<sup>th</sup> Street  
Roswell, NM 88201

27. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. TERMINATION. This Lease may be terminated by either party by giving thirty (30) days written notice.

31. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord's Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this \_\_\_\_\_ day of April, 2016.

CITY SEAL

LANDLORD:  
CITY OF ROSWELL, NEW MEXICO

\_\_\_\_\_  
Dennis J. Kintigh, Mayor

ATTEST:

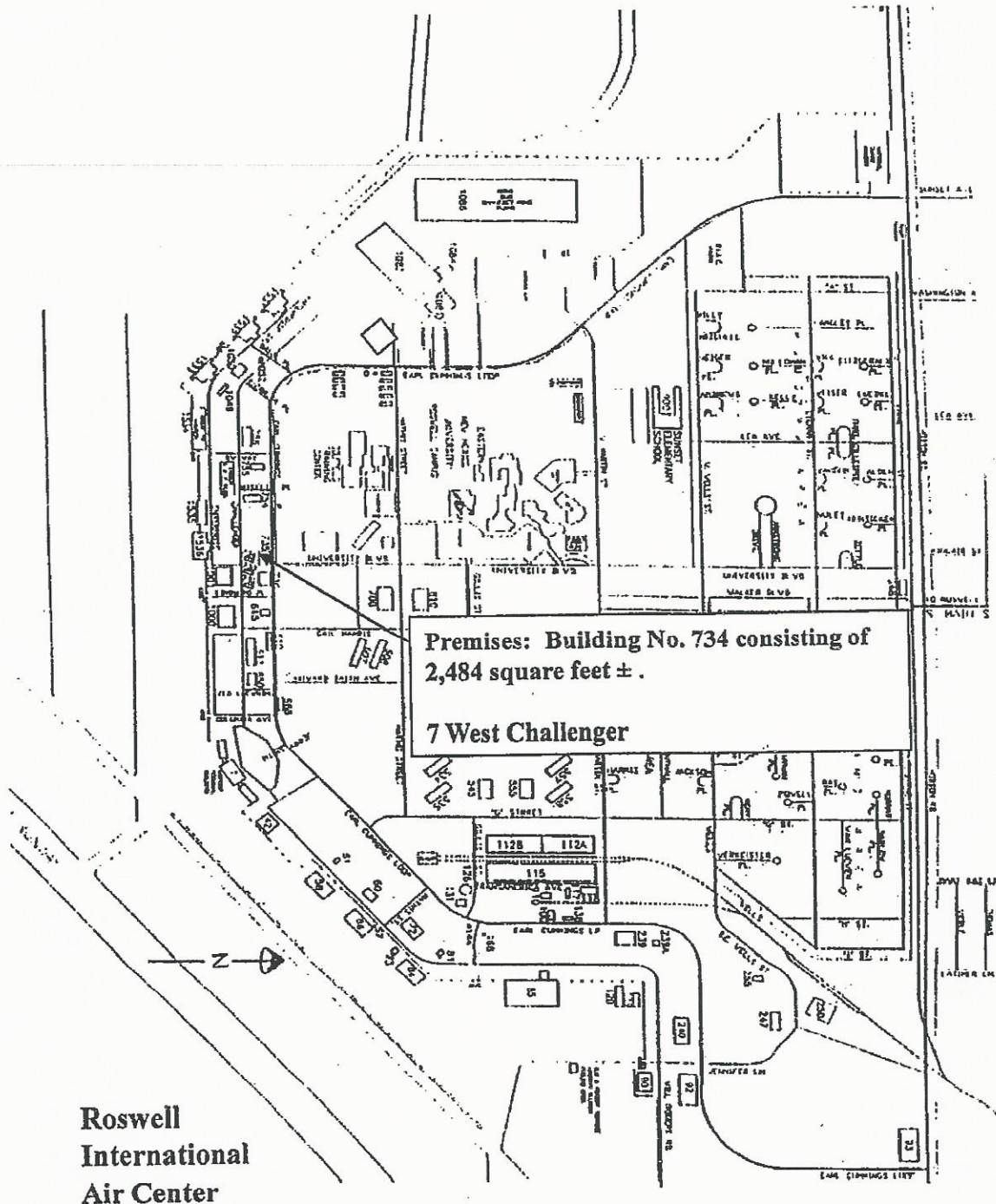
\_\_\_\_\_  
Sharon Coll, City Clerk

TENANT:  
OLD DOG BROTHERHOOD  
Roswell Chapter

\_\_\_\_\_  
President



# EXHIBIT "A"



# EXHIBIT "A"



**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 9.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Legal

**CONTACT:** William Zarr

**CHAIR:** Jason Perry

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**ACTION REQUESTED:**

Consider approval to authorize Cliff Waide, an individual, to renew his current lease agreement on "T" Hangar Building No. 120, Space 4.

**BACKGROUND:**

Cliff Waide leases the building for the purpose of aircraft storage and maintenance. 1,175 square feet. New rent amount is \$179 monthly; \$2,148 annually. Rent adjustment is 2.29%. Cliff Waide has been a customer since January 2013.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Cliff Waide new rent amount is \$179 monthly; \$2,148 annually. Rent adjustment is 2.29%. Term: May 1, 2016 through April 30, 2017.

**LEGAL REVIEW:**

The City Attorney has reviewed the requested actions.

**BOARD AND COMMITTEE ACTION:**

The Legal Committee recommended the City Council authorize approval at their March 24, 2016 meeting.

**STAFF RECOMMENDATION:**

Airport Staff recommends the approval of lease agreements and lease amendments as proposed.

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**Attachments**

Cliff Waide Lease

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# LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 14th day of April, 2016 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and CLIFF WAIDE, an individual, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

Building No. 120 space 4 consisting of 1175 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).

2. TERM. The Lease term is for one (1) year, commencing on May 1, 2016 and ending April 30, 2017 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand, One Hundred Forty Eight Dollars and No Cents (\$2,148.00), payable in 12 monthly installments of \$179.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$164.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to



Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. MAINTENANCE.

a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times.

b. Further, Tenant shall maintain and replace when necessary the plumbing and electrical systems as well as all glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the Premises.

c. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant shall be required to perform whatever maintenance Landlord deems reasonably necessary, provided, however, such maintenance shall be consistent in quality with that required of other City Tenants in comparable facilities. If said maintenance is not undertaken by Tenant within ten (10) days after the date Landlord gives Tenant written notice of corrections needed, Landlord shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be two times the cost for parts and labor and borne by Tenant.

7. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Tenant shall pay all utilities used on the Premises, including but not limited to telephone, electricity, gas, and water.

8. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. EQUIPMENT AND IMPROVEMENTS.

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises; and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner



that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein including snow clearance.

#### 10. INSURANCE.

a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for the amount of insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

#### 11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.



c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. **CONDITIONS OF DEFAULT.** If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or



b. Default in the observance of any of the Tenants's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of sixty (60) consecutive days; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

15. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense,



and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

16. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

17. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

18. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely for the purpose of storage and maintenance of an aircraft, together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell International Air Center ("RIAC").

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, foreign object debris (fod), collectively, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminate them. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.



c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the RIAC's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master plan.

e. Tenant shall be responsible for the security of the leased premises and gate (gate 12) providing egress thereto. Privately owned or company vehicles are authorized in the immediate T-Hangar area and The City Code Book, Chapter 5, prohibiting uncontrolled traffic on the Aircraft Operating Area (AOA) shall be observed in all other portions of the AOA. Overnight parking of vehicles outside of the T-Hangar shall not be permitted. The property will not be used for vehicle storage except for vehicle storage incident to aircraft use. Use of premises for Commercial Aviation activities as defined in the City of Roswell Code Book, Chapter 5, is denied.

f. Sale of Tenant's registered aircraft shall effectively terminate this lease in the case of a one aircraft hangar. Tenant shall have thirty (30) days from date of sale in which to purchase a suitable replacement and register it in the State of New Mexico to retain aircraft storage rights in the leased premises in the case of a one aircraft hangar. In the case of multiple occupants and aircraft in a leased area, the sale of any one aircraft requires that Tenant notify the Air Center Manager's office immediately upon any such occurrence for security and lease modification purposes.

19. NONDISCRIMINATION PROVISIONS. Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

20. DOMINANT PROVISIONS. The parties acknowledge that the Leased Premises are a part of the RIAC and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

21. ACCESS TO/ INSPECTION OF PREMISES. Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant's regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

22. ASSIGNMENT AND SUBLEASE. Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.



23. **HOLDOVER.** In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

24. **INTERPRETATION OF LEASE AGREEMENT.** Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

25. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

26. **NOTICES.**

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Manager  
1 Jerry Smith Circle  
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

Cliff Waide  
P.O.Box 516  
Hagerman, NM 88232

27. **EFFECT.** The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

28. **WAIVERS.** One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

29. **GOVERNING LAW; VENUE.** This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

30. **TERMINATION.** This Lease may be terminated by either party by giving thirty (30) days written notice.

31. **ENTIRE AGREEMENT AND AMENDMENT.** This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No

course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord's Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this \_\_\_\_\_ day of April, 2016.

CITY SEAL

LANDLORD:  
CITY OF ROSWELL, NEW MEXICO

\_\_\_\_\_  
Dennis J. Kintigh, Mayor

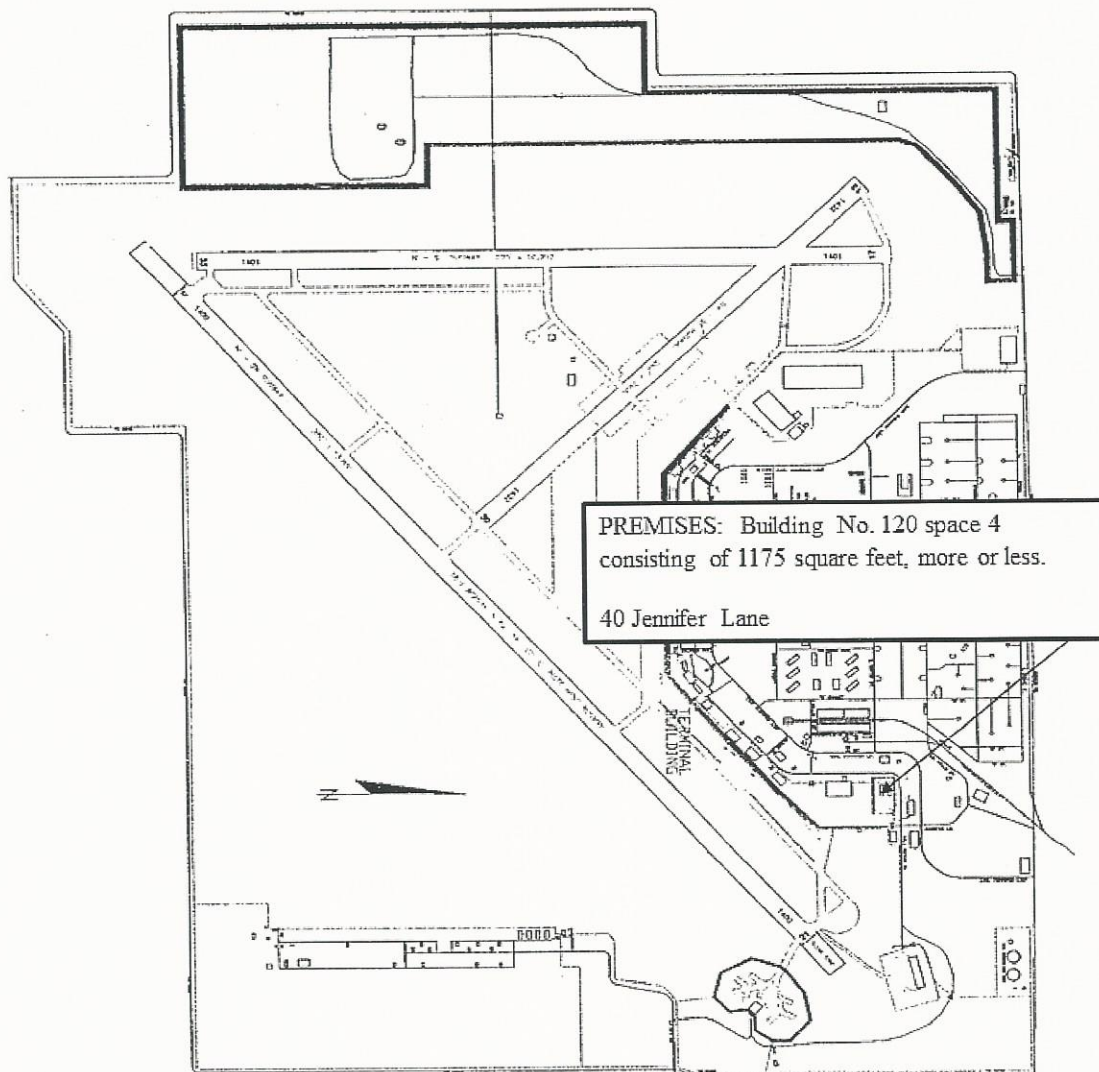
ATTEST:

\_\_\_\_\_  
Sharon Coll, City Clerk

TENANT:  
CLIFF WAIDE

\_\_\_\_\_  
Cliff Waide

## EXHIBIT "A"



## EXHIBIT "A"

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 10.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** Mike Mathews

**CHAIR:** N/A

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**ACTION REQUESTED:**

Resolution 16-25 - Weeds - The Resolution shall mandate the cleanup of approximately one hundred and six (106) separate properties within the City.

**BACKGROUND:**

At present, no more efficient means is available to enforce the requirements that property within the City limits be kept clean and orderly. Citation of property owners requires they be present in Roswell. Even the citations do not provide for the actual clean up and cannot give the City the right to file a lien for the cleanup expense. This procedure is cumbersome, but should result in resolution of some more severe situations.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Adoption of the resolution will probably cause a number of people to voluntarily clean up their property. Most of the balance will be cleaned up by the City and liens will be filed and later foreclosed. A few people may appeal the resolution to Council and a hearing will have to be provided to hear their appeals. Overall, the resolution should affect rapid cleanup of this season's weeds and other debris, followed by an extended collection period.

**LEGAL REVIEW:**

The City Attorney has reviewed the current ordinance.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

City Council consideration of Resolution 16-25.

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**Attachments**

Resolution 16-25 Weeds

Resolution 16-25 Weeds Exhibit

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CITY OF ROSWELL  
RESOLUTION NO. 16-25

A RESOLUTION REQUIRING THE REMOVAL OF CERTAIN RUBBISH, WEEDS, WRECKAGE OR DEBRIS; PROVIDING THAT THE CITY SHALL HAVE A LIEN FOR THE COST OF REMOVAL AND DECLARING CERTAIN PROPERTY TO BE SO COVERED WITH RUBBISH, WEEDS, WRECKAGE OR DEBRIS AS TO CONSTITUTE A PUBLIC NUISANCE PREJUDICIAL TO HEALTH, SAFETY AND GENERAL WELFARE.

WHEREAS, the City Council of the City of Roswell, New Mexico, finds that the premises listed in Exhibit A attached hereto and purportedly owned of record, or occupied by the parties named, have accumulated rubbish, weeds, wreckage or debris so as to be a menace to the public health, safety and general welfare of the inhabitants of the community; and further, that it is in the public interest to require the removal thereof, according to law;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

1. The premises set forth in Exhibit A are declared to be so covered with rubbish, weeds, wreckage or debris as to constitute a menace to the public comfort, health, safety and general welfare within the purview of Article 3-18-5 NMSA 1978.

2. The owners, occupants or agents in charge of said premises are hereby ordered to remove such accumulated rubbish, weeds, wreckage or debris within ten (10) days of the receipt of notice by certified mail or from the date of publication of this resolution. In the event such removal is not commenced or written objection filed with the City Clerk within ten (10) days after service of a copy of this resolution, then the City Manager is authorized and directed to cause such accumulated rubbish, weeds, wreckage or debris to be removed at the sole cost and expense of the owner, or other parties having an interest in the properties, and further, that the reasonable cost of such removal shall be and become a subsisting and valid lien against such property so removed and the lot or parcel of land from which such removal was made and shall be foreclosed in the manner provided by law for the foreclosure of municipal liens.

3. In the event the owner or other person aggrieved shall file a protest within the time provided, the City Council shall thereafter fix a date for hearing. At the hearing, the protestant shall be entitled to be heard in person, by agent or attorney and the City Council shall consider evidence whether or not its previous action shall be enforced or rescinded; if it shall be determined that the removal order should be enforced.

4. Persons aggrieved by the determination of the City Council have a right to appeal to a court of competent jurisdiction by giving notice of such appeal to the City Council within five (5) days after the day of issuance of such order or decision, together with a petition for court review duly filed with the Clerk of the Court within twenty (20) days of the date of issuance of the order or decision complained of.

ADOPTED, SIGNED AND APPROVED 14<sup>th</sup> day of April 2016.

CITY SEAL

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Dennis J. Kintigh, Mayor

ATTEST:

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Sharon Coll, City Clerk

707 W. 9TH ST. RIVERSIDE HEIGHTS AMEND Block 6 Lot 9 AGUILAR, JOYCE 707 W. 9TH ST. ROSWELL, NM 88201	208 W. 7TH ST. 208 W. 7TH ST. #1/2 RHEAS Lot 14 E 12' & Lot 15 TELLEZ, MIKE JR; RESTAURANT COMPANY, LLC 909 NORTH ALAMEDA LAS CRUCES, NM 88005
1207 N. KENTUCKY AVE. WEST SIDE Block 59 Lot 10 N 5' & Lot 11 VALENZUELA, NADIA 1207 N. KENTUCKY AVE. ROSWELL, NM 88201	1008 N. KENTUCKY AVE. WEST SIDE Block 34 Lot 2 S2 & Lot 3 BROWN, THOMAS E.; BROWN, TRACEY SPENCER 1008 N. KENTUCKY AVE. ROSWELL, NM 88201-4933
205 W. 13TH ST. NORTH SPRING RIVER Block 21 Lot 7 DOLLAHON, GARY; DOLLAHON, DONNA 100 W. QUANAH STREET BROKEN ARROW, OK 74011	1300 N. RICHARDSON AVE. NORTH SPRING RIVER Block 21 Lot 7 DOLLAHON, GARY; DOLLAHON, DONNA 100 W. QUANAH STREET BROKEN ARROW, OK 74011
1111 W. 14TH ST. HOWARD PLACE Block 2 Lot 13 SILVA, LEONARD 22 FERMIN CHAVEZ RD. BELEN, NM 87002-7300	400 W. 11TH ST. WEST SIDE Block 34 Lot 1 E 109' & Lot 2 ET FAMILY TRUST JOHN KENNETH & MARY JANE ROSEGARD – TRUSTEES 466 ELKHURST PL. HENDERSON, NV 89012
808 W. 8TH ST. DUNNS REDIV Block 0 Lot 27 ELLINGTON, WILLIAM E.; ELLINGTON, DEBRA M. 808 W. 8 <sup>TH</sup> ST. ROSWELL, NM 88201	905 W. 8TH ST. RIVERSIDE HEIGHTS Block 9 Lot 4 ELLINGTON, WILLIAM E.; ELLINGTON, DEBBIE M. 808 W. 8TH ST. ROSWELL, NM 88201
907 W. 8TH ST. RIVERSIDE HEIGHTS Block 9 Lot 3 ELLINGTON, WILLIAM E.; ELLINGTON, DEBBIE M. 808 W. 8TH ST. ROSWELL, NM 88201	3205 N. GARDEN AVE. LINDA VISTA ESTATES 2 Block 23 Lot 4 ROMERO, ERNIE PO BOX 3315 ROSWELL, NM 88202-3315
3207 N. GARDEN AVE. LINDA VISTA ESTATES 2 Block 23 Lot 3 HOLLAND, ARVILLE L.; HOLLAND, ROSETTA J. 2505 E. NORTHFIELD AVE. KINGMAN, AZ 86401	3307 BANDOLINA AVE. TIERRA BERRENDA 3 Block 21 Lot 5 FERGUSON, KENNETH W.; CONTRERAS, DARLENE BALDWIN, DENISE J. 3307 BANDOLINA AVE. ROSWELL, NM 88201
11 E.C. TUCKER CT. MISSION ARCH VILLAGE Lot 11 NARDONI, STEVEN; NARDONI, KARLA P. 12322 BRAMFIELD DR. RIVERVIEW, FL 33579	12 E.C. TUCKER CT. MISSION ARCH VILLAGE Lot 12 SNAP PARTNERS LP 1122 AIRWAY BLVD. EL PASO, TX 79925

511 W. 7TH ST. WEST SIDE Block 24 Lot 8 W 106.66' & Lot 9 MEDRANO, MANUEL; MEDRANO, YOLI 511 WEST 7 <sup>TH</sup> ST. ROSWELL, NM 88201	507 W. 7 <sup>TH</sup> ST. WEST SIDE Block 24 Lot 8 E 53.33' & Lot 9 GUERRA, FABIOLA E. 935 DAVIDSON DR. ROSWELL, NM 88203
414 N. LEA AVE. WEST SIDE Block 21 Lot 1 & Lot 2 GMAT LEGAL TITLE TRUST 2013-1 C/O US BANK NATIONAL ASSOCIATION - LEGAL TITLE TRUSTEE 8742 LUCENT BLVD. - SUITE 300 HIGHLANDS RANCH, CO 80129	905 N. WASHINGTON AVE. WEST SIDE Block 5 Lot 10 PRICE, VIRGINIA PO BOX 36 CAPITAN, NM 88316
1213 N. WASHINGTON AVE. WEST SIDE Block 2 Lot 14 RODRIGUEZ, MARY LEANN 27839 HWY 70 SAN PATRICIO, NM 88348	309 N. UNION AVE. WILDYS Block 3 Lot 10 JONES, GENEVIEVE 3620 SCENIC DR. REDDING, CA 96001-0115
3500 PEARSON DR. ENCHANTMENT WEST SUBDIVISION Lot 12 TURRIETA, DAWN 3500 PEARSON DR. ROSWELL, NM 88201	108 CALLE DEL SOL LINDA VISTA ESTATES Block 1 Lot 26 POND, JARRELL; POND, KAROLYN 609 N. MISSOURI ROSWELL, NM 88201
807 E. BERRENDO RD. TIERRA BERRENDA 5 Block 7 Lot 30 BAEZA, RAMON L. 180 HONOLULU RD. DEXTER, NM 88230	1218 N. MAIN ST. NORTH SPRING RIVER Block 19 Lot 1 LESS W 69.71' N 46.07' & Lot 2 GIANGRASSO, MIKE 115 RIVIERA DR. MASTIC BEACH, NY 11951
2608 SHERRILL LN. CORONADO REPLAT Block 2 Lot 19 BANK OF AMERICA NA 7105 CORPORATE DR. PLANO, TX 75024-4100	1907 N. GARDEN AVE. SHERRELL HEIGHTS Block 1 Lot 4 DECKER, MARISELA G.; DECKER, MARSHALL N. 130 SAGEBRUSH VALLEY RD. HAGERMAN, NM 88232-9608
2001 N. GARDEN AVE. SHERRELL HEIGHTS Block 1 Lot 2 & Lot 3 ANDREWS, RICHARD T.; ANDREWS, SANDRA A. 2001 N. GARDEN AVE. ROSWELL, NM 88201	2005 N. GARDEN AVE. MILITARY HEIGHTS Lot 35 COSS, FRANCISCO J. 702 E. GREENWOOD DR. ROSWELL, NM 88201
900 W. COLLEGE BLVD. S 32 T 10S R 24E NW4 W 78.42' E 982.26' S 164.74' N 194.74' TONJES, GARY; MC CANNA, SHIRLEY 5012 SUNNINGDALE AVE. N.E. ALBUQUERQUE, NM 87110	1408 N. MICHIGAN AVE. KEITH Block 2 Lot 1 NUNEZ, JANE; LUJAN, ANDREA 8204 BRET PLACE N.E. ALBUQUERQUE, NM 87109



805 N. LEA AVE. WEST SIDE SUMMARY PLAT 1 Lot 9 HICKS, WILSON R.; HICKS, ONIE M. 1516 S. KENTUCKY AVE. ROSWELL, NM 88203	1201 N. LEA AVE. WEST SIDE Block 32 Lot 8 TUCKER, TRACY L. 1201 N. LEA AVE. ROSWELL, NM 88201
1108 N. MISSOURI AVE. WEST SIDE Block 3 Lot 3 ESPINOZA, ESTEBAN RODRIGUEZ &RODRIGUEZ, MIGUEL ANGEL; RODRIGUEZ, MIGUEL ANGEL 2525 OLIVE ST. HUNTINGTON PARK, CA 90255	1106 N. MISSOURI AVE. WEST SIDE Block 3 Lot 4 RODRIGUEZ, CRUZ; RODRIGUEZ, ISABEL 792 E. SANTA FE ST. SAN BERNADINO, CA 92408
1004 N. MISSOURI AVE. 1006 N. MISSOURI AVE. WEST SIDE Block 4 Lot 5 & Lot 6 SARELLANO, GUILLERMO P. & ESMERALDA 212 E. REED ST. ROSWELL, NM 88203	1003 N. MISSOURI AVE. WEST SIDE Block 27 Lot 9 EARLEY, HARRY P. 1317 O ST., APT 8 SACRAMENTO, CA 95814
1001 N. MISSOURI AVE. WEST SIDE Block 27 Lot 8 CONE, ANDREW C.; VILLENNA, ALEJANDRA LOPEZ 1025 ORLANDO CIR. PLANO, TX 75075	910 N. MISSOURI AVE. WEST SIDE Block 5 Lot 2 BUENO, ROSALIO N. 1852 DEAN JONES EL PASO, TX 79936
1612 PONTIAC DR. SCHNEDAR REDIV Block 5 Lot 4 CRIHFIELD, STEPHEN 1612 PONTIAC DR. ROSWELL, NM 88201	1002 CRESCENT DR. CRESCENT HEIGHTS Block 3 Lot 1 GRANADOS, GABRIEL J.; GRANADOS, ANA M. 865 LOMA HERMOSA DR. N.W. ALBUQUERQUE, NM 87105
1001 KINGS DR. CRESCENT HEIGHTS Block 1 Lot 16 FINLEY, GEORGE E.; FINLEY, MYRTLE C. C/O PATRICK FINLEY 4414 AVENIDA DEL SOL N.E. ALBUQUERQUE, NM 87110-6179	1809 N. UNION AVE. 1811 N. UNION AVE. 1813 N. UNION AVE. ALLISON REDIV Block 2 Lot 17 THRU Lot 19 BMR PROPERTIES LLC. 3901 CHAPARRAL ROAD ROSWELL, NM 88201
1815 N. UNION AVE. ALLISON REDIV Block 2 Lot 20 BMR PROPERTIES LLC. 3901 CHAPARRAL ROAD ROSWELL, NM 88201	1819 N. UNION AVE. ALLISON REDIV Block 2 Lot 22 BMR PROPERTIES LLC. PO BOX 255 ROSWELL, NM 88202-0255

1821 N. UNION AVE. ALLISON REDIV Block 2 Lot 23 BMR PROPERTIES LLC. PO BOX 255 ROSWELL, NM 88202-0255	1823 N. UNION AVE. ALLISON REDIV Block 2 Lot 24 BMR PROPERTIES LLC. PO BOX 255 ROSWELL, NM 88202-0255
702 SHERRILL LN. BERRENDO IRRIGATED FARMS Block 20 Lot 36 BUCKMISTER, JOHN & KIM 702 SHERRILL LANE ROSWELL, NM 88201	1504 W. 3RD ST. CENTRAL PARK Block 14 Lot 3 & Lot 4 FEDERAL NATIONAL MORTGAGE ASSOCIATION 8609 WETWOOD CENTER VIENNA, VA 22183
APPROX 4 ST. MARYS PL. PIONEER SUMMARY PLAT Block 0 Lot 3 AG NEW MEXICO FARM CREDIT SERVICES FLCA 233 FAIRWAY TERRACE N CLOVIS, NM 88101	109 E. FOREST ST. LEVERS & JOHNSON Block 1 Lot 16 MITCHELL, KENNETH L. 23019 ANGOSTRURA BLVD. SAN ANTONIO, TX 78261
222 S. VIRGINIA AVE. THURBERS Block 5 Lot 6 GOMEZ,NINA MELANIE ET AL 512 GREGORY ST. EL PASO, TX 79902	605 E. DEMING ST. BARNETTS Block 8 Lot 10 MALDONADO-ROMERO, VERONICA G. PO BOX 1046 WHITES CITY, NM 88221
600 E. DEMING ST. BARNETTS Block 9 Lot 13 SILVA, EDUVIGEN MRS. C/O LOUIS MENDOZA 600 EL PARAISO ALBUQUERQUE, NM 87107	601 E. VAN BUREN ST. JOHNSON & ALLISON Lot 4 Block 1 FRUITLAND Block A Lot 12 WALKER, MONROE C/O WAYMAN WALKER PO BOX 6238 SAN ANTONIO, TX 78209
1406 S. GARDEN AVE. SOUTH HIGHLANDS REDIVISION Block 29B Lot 4 RODRIGUEZ, JULIA 934 W. 15-1/2 ST. HOUSTON, TX 77008	1502 S. GARDEN AVE. FRUITLAND Block 4 Lot 1 E 90' N 25' S 626.6'/E 135' N 111.6' S 601.6' PACHECO, MARGIE; PACHECO, DANIEL RAY 1502 S. GARDEN AVE. ROSWELL, NM 88203
1518 S. GARDEN AVE. FRUITLAND Block 4 Lot 1 N 50' S 250' E 140' ORNELAS, ALBERT M.; ORNELAS, ISABEL 1253 BEAUMONT AVE. BEAUMONT, CA 92223-1505	313 S. ASH AVE. ROSE Lot 6 N 62.5' W 200' ARIAS, EDITH 1504 BLUE WILLOW CT. PFLUGERVILLE, TX 78660

808 E. TILDEN ST. FLORA VISTA Block 4 Lot 17 & Lot 18 CAMPOS, GUILLERMINA HERNANDEZ 4140 E. CLEAR CREEK CAMP VERDE , AZ 86322 88203	1209 E. WALNUT ST. DOC COVINGTON Block 2 Lot 15 LEWIS,STERLING F.; ET UX 1209 EAST WALNUT ROSWELL, NM 88203
500 E. 3RD ST. LEA Lot 82 PETRO ENERGY TRANSPORT CO. PO BOX 490 ROSWELL, NM 88202	301-303 E. 8TH ST. S 33 T 10S R 24E NE4SW4 W 50' N 82.7' S 33 T 10S R 24E NE4SW4 E 50' W 100' N 82.7' GREER, BOBBY W. 5100 CLAYTON RD. ROSWELL, NM 88201
504 E. 4TH ST. LEA Lot 30 RIVERA, FEDERICO ELIZALDE 4062 42ND ST. APT. #4 SAN DIEGO, CA 92105	420 E. 3RD ST. LEA Lot 84 COPP, MICHAEL F.; COPP, MICHAEL A. PO BOX 257 HARTFORD, VT 05047
523 E. 3RD ST. LEA Lot 70 S 107.4' E 77.67' LEE, JOHN E.; LEE, JULIA B. C/O BONITA BRAASCH 704 PARKLAND CIR. S.E. ALBUQUERQUE, NM 87108	315 E. 8TH ST. S 33 T 10S R: 24E NE4SW4 E 50' W 400' N 82.7' MC KEAN, JEANIE C. 203 KENNEL LN. CARLSBAD, NM 88220
314 E. 7TH ST. BELLE PLAIN Lot 59 E 48' W 98' FRAZER, TERRY SCOTT 1691 WHEELER RD. CHERRY VALLEY, IL 61016	APPROX 323 ½ & 325 E. 8 <sup>TH</sup> ST. S 33 T 10S R 24E NE4SW4 E 50' W 650' N 82.7' S 33 T 10S R 24E NE4SW4 E 50' W 700' N 82.7' HULSE, SUZETTE 1604 5TH STREET N.E. RIO RANCHO, NM 87124
324 E. 8TH ST. BELLE PLAIN Lot 48 W 50' LOPEZ, ELDEN I. 4719 W. MARGARET ST. PASCO, WA 99301	310 E. 7TH ST. BELLE PLAIN Lot 60 E 44' JONES, CHARLES R. 724 ACORN CT. SAN RAMON, CA 94583
319 E. 7TH ST. 319 E. 7TH ST. #1/2 BELLE PLAIN Lot 52 E 54' RAMIREZ, RAFAEL; RAMIREZ, KIMBERLY F. 912 SHIRLEY N.E. ALBUQUERQUE, NM 87112	512 & 514 E. 7TH ST. BELLE PLAIN Lot 57 E 44' BELLE PLAIN Lot 56 W 40' GARDEA, SOLEDAD RAMIEREZ 1518 E. 7TH ST. ROSWELL, NM 88201
513 N. RAILROAD AVE. HOLSTUN REDIVISION Tract A GONZALES, JOE SIMON 513 N. RAILROAD AVE. ROSWELL, NM 88201	511 N. RAILROAD AVE. HOLSTUN REDIVISION Tract B PEREZ, FEDERICO 511 N. RAILROAD ROSWELL, NM 88201

702 E. 5TH ST. BELLE PLAIN Lot 38 W 85.2 FT S 208.7' N 253.70' & Lot 38 E 60' W 145.2' S 191.5' N 236.5' RAMIREZ, CARLOS A. GARCIA, MARIA CELIA GUADALUPE PO BOX 805 CHULA VISTA, CA 91912	113 E. BALLARD ST. SOUTH MANOR Block 5 Lot 4 TEMPERO, DONNA 113 E. BALLARD ST. ROSWELL, NM 88203
1200 E. WALNUT ST. DOC COVINGTON Block 3 Lot 10 PAUL, ROBERTA 224 TAN BARK DR. LEWISTOWN, PA 17044	1109 E. 1 <sup>ST</sup> ST. DOC COVINGTON Block 4 Lot 1 JIMENEZ, JUAN 973 E. DORIS ST. AVONDALE, AZ 85323-2786
100 S. ELM AVE. ACEQUIA Block 1 Lot 2 & Lot 3 THRU Lot 5 AMADOR, JOHN G. PO BOX 501 ROSWELL, NM 88202-0501	102 S. ELM AVE. 104 S. ELM AVE. ACEQUIA Block 1 Lot S 6 7 8 & Lot 9 LESS S 15' MEDINA, JERRY A. PO BOX 2544 ALVERTVILLE, AL 35950-2544
102 S. MULBERRY AVE. ACEQUIA Block 2 Lot 1 & Lot 2 MUELLER, JUANITA L. 4705 FARMINGTON RD. SHERMAN, TX 75092	901 E WALNUT ST ACEQUIA Block 6 Lot 21 & Lot 22 CHAVARRIA, DELLA 901 E WALNUT ST ROSWELL, NM 88203
718 E. ALAMEDA ST. FLORA VISTA Block 2 Lot 1 & Lot 2 ALVAREZ, ALURA L. ALVAREZ, ALICE 2905 ALAMOGORDO DR. N.W. ALBUQUERQUE, NM 87120	216 E. POE ST. KEITHS SOUTHSIDE 2 Block 1 Lot 9 LESS E7' BROWN, HERBERT C/O MARVA M BROWN 8628 NEPPPEL RD. N.E. MOSES LAKE, WA 98837
401 S. SEQUOIA AVE. WEST VIEW AMEND Block 1 Lot 20 MC GHEE, CATRINA B. 605 JOHNSON ST. CLOVIS, NM 88101	500 S. LEA AVE. ALAMEDA HEIGHTS Block 8 Lot 1 N 50' GRAY, GREGORY MARC 500 S. LEA AVE. ROSWELL, NM 88203
1506 S. MADISON AVE. SOUTH HIGHLANDS EXT. B Block 2 Lot 3 S 27' And Lot 4 N 60' SAIS, DAVID; SAIS, ALICIA S. 1506 S. MADISON AVE. ROSWELL, NM 88203	1109 KENLEA DR. VALLEY VIEW REDIV N2 Block 5 Block 0 Lot 6 SALCIDO, JOUIS G.; SALCIDO, MARIA C. 1109 KENLEA DR. ROSWELL, NM 88203
1601 S. LEA AVE. SOUTH HIGHLANDS EXT. C Block 2 Lot 15 N 47' and Lot 16 BANK OF AMERICA, NA 8501 FALL BROOK AVE. CANOGA PARK, CA 91304	1019 S. UNION AVE. FARM Block 2 Lot 14 FERGUSON, ROBERT 20436 S. LITTLE FOX DR. CLAIREMORE, OK 74019

600 S. KENTUCKY AVE. ALAMEDA HEIGHTS Block 12 Lot 1 N 100' PAGE, NATHAN T. 1001 IVY DR. ROSWELL, NM 88203	904 DAVIDSON DR. FARM Block 2 Lot 22 MENDEZ, JERRY H. 35 ROPE ROAD CLOVIS, NM 88101
APPROX. 704 W. MATHEWS ST. LEWIS 1 <sup>ST</sup> AMND Block 5 Lot 3 HARDT, WILLIAM D.; HARDT, JANET 138 LANDING TRAIL N.E. RIO RANCHO, NM 87124	300 W. MATHEWS ST. SOUTH ROSWELL Block 56 Lot 13 COTTON, ISAAC PO BOX 5282 SACRAMENTO, CA 95817-0282
9 HUNSICKER PLACE PECOS VALLEY VILLAGE Block 5 Lot 19 LIK KUN YU 9 HUNSICKER PL. ROSWELL, NM 88203	302 W. MATHEWS ST. SOUTH ROSWELL Block 56 Lot 11 MRS. J.B. GREEN C/O LARRY LOWE 2313 BROADWAY LUBBOCK, TX 79401
507 S. MISSISSIPPI AVE. BINNS Block 1 Lot 4 MUELKER, JOHN DAVID 507 S. MISSISSIPPI AVE. ROSWELL, NM 88203	909 S. LEA AVE. 5-11-24 N2 SE4 S50' N1040' W231.7' E1850' M/L RANGEL, ANGEL; LUJAN, JULIA PATRICIA 909 S. LEA AVE. ROSWELL, NM 88203
2902 EMERALD DRIVE SOUTH PLAINS PARK REPLAT Block 3A Lot 16 LUERAS, MAX L. PO BOX 2522 ROSWELL, NM 88202-2522	1012 W. SUMMIT ST. BECK Block 5 Lot 5 GAWLAK, CRYSTAL 1012 W. SUMMIT ST. ROSWELL, NM 88203
APPROX. 1101 W. SUMMIT ST. BECK Block 3 Lot 12 KNIGHT, BONNIE 3714 W. GRAND ARTESIA, NM 88210	1210 YALE DR. MESA PARK 6 Block 26 Lot 3 ALEMAN, JOSE R. 156 E. SCHIRRA DR. ODESSA, TX 79766
111 S. PENNSYLVANIA AVE. #A 111 S. PENNSYLVANIA AVE. #B THURBERS Block 2 Lot 9 ABERDEEN PROPERTIES, LLC PO BOX 3135 ROSWELL, NM 88202-3135	112 S. PENNSYLVANIA AVE. 305 W. WALNUT ST. WEST SIDE Block 47 Lot 6 S5' and Lot 7 BANK OF AMERICA, NA 5401 NORTH BEACH ST. FORT WORTH, TX 76137

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 11.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** Mike Mathews

**CHAIR:** N/A

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**ACTION REQUESTED:**

Resolution 16-26 - Condemnations - The Resolution shall require the removal or demolition of six (6) dilapidated structures.

**BACKGROUND:**

These structures constitute a public nuisance harmful to the public health, safety and general welfare.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Resolution and notice will be served to owners requiring action within fifteen (15) days. Demolition by the City will proceed if no action is taken and a lien will be placed on the property for cost of removal.

**LEGAL REVIEW:**

The City Attorney has reviewed the current ordinance.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

City Council consideration of Resolution 16-26.

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**Attachments**

Resolution 16-26 Condemnations

Resolution 16-26 Condemnations Exhibit

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CITY OF ROSWELL  
RESOLUTION NO.16-26

A RESOLUTION REQUIRING THE REMOVAL AND/OR DEMOLITION OF CERTAIN DAMAGED AND DILAPIDATED BUILDINGS, STRUCTURES OR PREMISES; PROVIDING THAT THE CITY SHALL HAVE A LIEN FOR THE COST OF REMOVAL; PRESCRIBING THE PROCEDURE INCIDENT TO SUCH REMOVAL AND/OR DEMOLITION AND DECLARING CERTAIN PROPERTY TO BE IN SUCH STATE OF DISREPAIR, DAMAGE AND DILAPIDATION AS TO CONSTITUTE A DANGEROUS BUILDING AND A PUBLIC NUISANCE PREJUDICIAL TO THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.

WHEREAS, it is the opinion of the City Council of the City of Roswell, New Mexico, that those certain buildings or structures upon the premises located as follows and purportedly owned of record, or occupied by the parties hereinafter named, are and have become in such state of disrepair, damage and dilapidation as to be a menace to the public health, safety and general welfare of the inhabitants of the community; and further, that it is in the public interest to require the removal thereof, according to law, by reason of the condition or conditions set forth in Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO:

1. That the buildings or structures set forth in Exhibit "A" are declared to be in such state of disrepair, damage and dilapidation as to constitute a dangerous building within the purview of Roswell Municipal code section 16-12, as well as being a public nuisance prejudicial to the public health, safety and general welfare. That such dangerous buildings or structures set forth, if any, cannot reasonably be repaired so that they will no longer exist in violation of the terms of the ordinance.

2. The owners, occupants, if any, or agent in charge of said premises be, and they hereby are ordered and required to remove such dangerous buildings, or structures within a reasonable time thereafter not to exceed fifteen (15) days from the receipt of notice by certified mail or from date of publication of this resolution as hereinafter provided, and as the case may be. In the event such removal be not commenced by such owner, occupant or agent, or written objection thereto be filed with the City Clerk within ten (10) days after service of a copy of this resolution by certified mail or by publication, requesting a hearing, then and in such event, the City Manager is hereby authorized and directed to cause such dangerous buildings or structures to be removed at the sole cost and expense of the owner, owners or other parties having an interest in said properties, and further, that the reasonable cost of such removal shall be and become a subsisting and valid lien against such property so removed and the lot or parcel or land from which such removal was made and shall be foreclosed in the manner provided by law for the foreclosure of municipal liens. Alternatively, the City Manager may act pursuant to Article 3-18-5 (G) (NMSA, 1978), and cause the dangerous buildings or structures to be removed and give title to them or their components to the removing

person or persons.

3. In the event the owner or other interested party aggrieved shall file his protest within the time herein provided, requesting a hearing, on the matter, the City Council shall fix a date for hearing, at which time said Protestants shall be entitled to be heard in person, by agent or attorney, and the City Council shall consider evidence whether or not its previous action should be enforced or rescinded. If it shall be determined that the removal order should be enforced, and the owner(s) shall fail or neglect to comply with said decision of the City Council, they shall have a right of appeal to a court of competent jurisdiction by giving notice of such appeal to the City Council within the (10) days after the date of the City Council decision, together with his petition for court review duly filed with the Clerk of the Court within thirty (30) days of the date of the decision complained of.

4. Upon the adoption of this resolution, it shall be the duty of the City Building Inspector to notify the owner, occupant or agent in charge of such building or structure of the adoption of this resolution by serving a copy thereof upon him by certified mail, return receipt requested; and in the event such owner, occupant or agent cannot be found or served within said City as herein above provided, such notice may be served by posting a copy of said resolution upon the premises complained of, followed by legal publication of said resolution one time in a newspaper of general circulation within the city.

ADOPTED, SIGNED AND APPROVED 14<sup>th</sup> day of April 2016.

CITY SEAL

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Dennis J. Kintigh, Mayor

ATTEST:

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Sharon Coll, City Clerk



Location	Condition	Name
907 W. 7TH ST. RIVERSIDE HEIGHTS Block 24 Block 24 Lot 8 E 68' & Lot 9	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	LOONEY, STEVE 907 W. 7TH ST. ROSWELL, NM 88201
2301 DAVIS AVE. DAVIS Lot 9 & Lot 10	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	MOORE, MARINA J. 8731 W. GREENBRIAN DR. PEORIA, AZ 85382
1100 W. COLLEGE BLVD. S 32 T 10S R 24E NW4 W 50' E 1713.58' S 179' N 209' EXC S 14.26' E 48.3'	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	LONG, GRACE 1100 W. COLLEGE ROSWELL, NM 88201
117 PEAR ST. GREEN ACRES Block 2 Lot 21	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	CRAWFORD, ROSALAND 2801 N. KENTUCKY AVE APT. 121 ROSWELL, NM 88201
1111 E. WALNUT ST. VAUGHN Block 5 Lot 6 THRU Lot 9	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	RUPE, PATRICIA MORROW, MICHAEL 1111 E. WALNUT ST. ROSWELL, NM 88203
1512 S. LEA AVE. SOUTH HIGHLANDS EXT. B Block 3 Lot 7	Dilapidated/ Deterioration Open To Public, Inadequate Maintenance	JOHNSON, HOUSTON RAY JR. & JOHNSON, LAVERNE 1512 S. LEA AVE. ROSWELL, NM 88203

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 12.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Consider funding of Lodgers' Tax for the Rotary Clubs of Roswell Annual Desert Sun Charity Golf Championship in the amount of \$1,700.

**BACKGROUND:**

The Rotary Clubs of Roswell Annual Desert Sun Charity Golf Championship was funded in 2010-2012 and was funded again in 2015. The Desert Sun Golf is scheduled for July 15-17, 2016. This event is a two day, 36 hole Pro-Am golf Tournament with a one day Amateur Shootout. Proceeds are donated to local charities. The total expected 160 attendees will include an estimated 60 plus attendees from out-of-town. The location of the event is the Nancy Lopez Golf Course at Spring River.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

The applicant request funding in the amount of \$3,700.

Lodgers' Tax Fund

- Visitor Promotion
  - Rotary Clubs of Roswell Annual Desert Sun Charity Golf Championship - budgeted.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Occupancy Tax Board recommended funding for this event at their meeting on March 29, 2016. The Finance Committee recommended funding at their meeting on Thursday, April 7, 2016.

**STAFF RECOMMENDATION:**

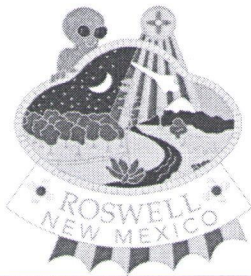
City Council consideration of funding for the Rotary Clubs of Roswell Annual Desert Sun Charity Golf Championship in the amount of up to \$1,700. of eligible expenses at 50% on a reimbursement basis.

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**Attachments**

Desert Sun Golf

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## CITY OF ROSWELL –SPECIAL EVENT LODGERS’ TAX FUNDS – APPLICATION

NAME OF EVENT: Rotary Clubs of Roswell Annual Desert Sun Golf Charity Golf Championship	
DATE(S) OF EVENT: July 15, 16 & 17, 2016	(application required 90 days prior to event)
NAME OF ORGANIZATION APPLYING FOR FUNDING: Roswell Rotary Club, Pecos Valley Rotary and Sunrise Rotary	

DESCRIBE EVENT: Two day, 36 hole Pro-Am Golf Tournament with a one day Amateur Shootout. The Tournament donates the proceeds to local charities. In 26 years, the tournament has generated more than \$535,000 for local charities. Last years beneficiaries were CASA - Chaves County, Salvation Army and ENMU-R Foundation for nursing scholarships. The Golf Committee is currently undertaking the process of soliciting proposals from local charities with the beneficiaries to be chosen in the coming months.	
LOCATION OF EVENT: Nancy Lopez Golf Course at Spring River	
HOW WILL YOU ADVERTISE AND MARKET THE EVENT? Radio ads, newspaper, the tournament website, direct mail, flyers, posters and signage at Nancy Lopez and surrounding area (Artesia, Carlsbad, Ruidoso, Hobbs) golf courses.	
HOW WILL ATTENDANCE AND ORIGIN BE MEASURED? Through registration and survey	
ESTIMATED TOTAL # OF ATTENDEES: 160	EST. # ATTENDEES FROM OUTSIDE CHAVES CO.: 60+
HAVE YOU DISCUSSED SPECIAL ROOM PACKAGES DURING YOUR EVENT WITH A ROSWELL LODGING FACILITY? The committee is in the process of making special room packages available during the event with a lodging facility in Roswell.	
WHAT PERCENTAGE OF YOUR MARKETING BUDGET WILL BE USED OUTSIDE OF ROSWELL? 40 %	
WILL YOU HAVE A WEBSITE FOR YOUR EVENT? Yes	
EVENT WEBSITE (if applicable): www.desertsungolfclassic.com	

**LIST FULL AMOUNT OF MARKETING/ADVERTISING and OTHER ELIGIBLE EXPENSES ON PAGE 2.**

REMEMBER: FUNDING IS PROCESSED ON A REIMBURSEMENT BASIS AT 50% OF ELIGIBLE EXPENSES UP TO THE AMOUNT APPROVED

(a one-to-one match)

A REQUEST OF \$25,000 and up may require a signed contract with the City of Roswell.

PAID receipts for eligible expenses must be turned in for reimbursement.

Requested Funding must equal 50% or less of the Total Eligible Expenses listing on Page 2

AMOUNT REQUESTED \$ 3,700.00

**IF YOU ARE REQUESTING SPONSORSHIP, PERSONNEL OR EQUIPMENT FROM ANY CITY DEPARTMENT - COMPLETE ON PAGE 2.**

### RULES AND REGULATIONS

I UNDERSTAND THAT THESE ARE PUBLIC FUNDS AND THEY ARE TO BE ADMINISTERED ACCORDING TO STATE LAW AND CITY ORDINANCES, AND I AGREE TO SUBMIT A FOLLOW UP REPORT WITH A FINANCIAL STATEMENT WITHIN NINETY (90) DAYS FOLLOWING THE EVENT OR I MAY FORFEIT THE FUNDS AS WELL AS ELIGIBILITY FOR FUTURE FUNDING. I AGREE TO USE THE CITY LOGO AND/OR "PAID IN PART BY THE CITY OF ROSWELL LODGERS' TAX" ON ALL ADVERTISING, VERBAL OR WRITTEN. I UNDERSTAND THAT THIS APPLICATION CONSTITUTES A CONTRACT BETWEEN THE CITY OF ROSWELL AND THE ORGANIZATION TO RECEIVE THE FUNDS, SHOULD THE FUNDS BE APPROVED BY THE OCCUPANCY TAX ADVISORY BOARD AND THE CITY OF ROSWELL GOVERNING BODY. I UNDERSTAND FUNDING MAY BE DENIED OR THAT APPROVED FUNDING AMOUNTS MAY DIFFER FROM THE AMOUNT REQUESTED ON THE APPLICATION. I ALSO UNDERSTAND THAT THE DISBURSEMENT OF FUNDS IS ON A DRAWDOWN REIMBURSEMENT BASIS (matched by Lodgers' Tax at 50% up to the funded amount, a one-to-one match).

NAME (PRINT) OF APPLICANT MAKING REQUEST: Karen Rogers Melton, CPA		
SIGNATURE OF APPLICANT: <i>Karen Rogers Melton</i>		
(SEND CHECK TO) ADDRESS / CITY / STATE / ZIP: P.O. Box 1836		
Roswell	NM	88202-1836
PHONE: 575-622-8500	CELL:	E-MAIL:
DATE SUBMITTED: <b>MAR 17 2016</b>	90 DAYS? <b>Y</b> / N	TO BE PRESENTED AT MEETING ON: <b>3-29-16</b>

- ATTACH TOTAL PROPOSED BUDGET FOR EVENT ALONG WITH A DETAILED ADVERTISING/MARKETING BUDGET.
- PLEASE FEEL FREE TO ADD ADDITIONAL PAGES, SAMPLES OF ADS OR BROCHURE ARTWORK.
- PLEASE PROVIDE ORIGINAL APPLICATION PLUS (+) 5 COPIES OF APPLICATION, ADDITIONAL PAGES AND /OR SAMPLES
- MAIL OR DELIVER TO CITY OF ROSWELL, c/o Lodger Tax Grant Request, 425 N RICHARDSON, (P O BOX 1838), ROSWELL, NM 88202-1838

\* SEE MEETING SCHEDULE FOR APPLICATION DUE DATES. (These are "Received by" dates, not postmarked dates.) Revised Jan 7, 2016



NAME OF EVENT: <b>Rotary Clubs of Roswell Desertsun Charity Golf Classic</b>
DATE(S) OF EVENT: <b>July 15, 16 &amp; 17, 2016</b>
NAME OF ORGANIZATION: <b>Roswell Rotary Club, Pecos Valley Rotary Club and Sunrise Rotary Club</b>

**PROPOSED ELIGIBLE EXPENSES:**

ELIGIBLE EXPENSES:	LOCAL AMOUNT	OUT –OF-TOWN AMOUNT	TOTAL AMOUNT	Out-of-Town %
NEWSPAPER	600.00	400.00	1,000.00	40
MAGAZINE			0.00	
RADIO	720.00	480.00	1,200.00	40
TELEVISION			0.00	
INTERNET	200.00	200.00	400.00	50
PRINTING (brochures, posters, cards)	2,700.00	1,800.00	4,500.00	40
MAILING	150.00	150.00	300.00	50
T-SHIRTS (or other marketing items)			0.00	
SECURITY			0.00	
CLEAN UP (Sanitation)			0.00	
OTHER:			0.00	
SUB TOTALS	4,370.00	3,030.00	7,400.00	

TOTAL ELIGIBLE EXPENSES: \$ 7,400.00 (50% = \$ 3,700.00)  
list the 50% or less as the amount requested on page 1.

**IF YOU ARE REQUESTING SPONSORSHIP FROM A CITY OF ROSWELL DEPARTMENT – COMPLETE THE FOLLOWING:**

DEPARTMENT	TYPE OF SPONSORSHIP	ESTIMATED COST	*City use only*

**IF YOU ARE REQUESTING CITY EMPLOYEES – PLEASE COMPLETE THE FOLLOWING:**

DEPARTMENT	TYPE OF WORK REQUESTED	# OF EMPLOYEES	DATES/TIME REQUIRED	TOTAL HOURS

**IF YOU ARE REQUESTING CITY EQUIPMENT – PLEASE COMPLETE THE FOLLOWING:**

DEPARTMENT	TYPE OF EQUIPMENT	EST COST per day	# DAYS REQUIRED	TOTAL COST *City use only*

## **2015 EVENT INFORMATION:**

**Roswell Desert Sun Charity Golf Championship: July 17 - 19, 2015**

**Awarded Amount: \$1,700.00      Reimbursed Amount: \$614.00**

1. Event Report (includes summarized survey information)
2. Lodgers' Tax Financial Report





**CITY OF ROSWELL  
LODGERS' TAX FUNDS  
EVENT REPORT**

NAME OF EVENT: Roswell Desert Sun Charity Golf Championship	
DATE(S) OF EVENT: July 17, 18 & 19, 2015	
NAME OF ORGANIZATION SPONSORING EVENT: Rotary Clubs of Roswell	
NAME OF CONTACT PERSON Karen Rogers Melton	
MAILING ADDRESS: P.O. Box 1836	
CITY/STATE/ZIP Roswell, NM 88202-1836	
PHONE: 575-622-8500	CELL PHONE:
E-MAIL ADDRESS (optional):	

**REPORT ON THE OUTCOME OF THE EVENT:**

The 2015 Charity Golf Championship returned to a Pro Am format and was very successful
The event raised more than \$36,000 for local charities (CASA, Salvation Army and
Eastern New Mexico University Roswell Foundation). With over 103 golfers and scores of
volunteer Rotarians the tournaments was a huge success and based on the feedback
we received from the participant golfers we expect the event to grow significantly
in future years.

**DESCRIBE ADVERTISING USED and IMPACT ON BRINGING VISITORS TO ROSWELL: (Attach copies or photos)**

Advertising included print and radio exposure. The two items we are seeking
reimbursement for is an add ran in the Roswell Daily Record and the cost of the sign
which is displayed year round on the pavilion at the Spring River Golf Course.

WHAT WAS ESTIMATED VISITOR ATTENDANCE? 50+

HOW WAS IT MEASURED? Personal interviews with the out of town golfers by golf
professional Carlton Blewett.

WHAT WAS THE ESTIMATED HOTEL/MOTEL, LODGING IMPACT? There were 50 golfers from out of town,
some also had family members with them. We estimate there were 35 room nights for 2
nights resulting in 70 hotel nights.

DO YOU PLAN TO REQUEST LODGERS' TAX FUNDS NEXT YEAR? Yes

ADDITIONAL REMARKS TO THE OTB: We very much appreciate the continued support of the
Occupancy Tax Board, we believe this event creates significant exposure for visitors
coming to Roswell. It also generates over \$5,000 in revenue for the Spring River
Golf Course.

SIGNATURE:

*Karen Rogers Melton*

DATE:

10/13/13

- Attach copies or photos (see policy for documentation details) of advertising used.
- Provide sample of event survey used.
- Provide a complete summary of survey results for merchant, restaurant and lodging impact (how many room nights).
- Event Report is due ninety (90) calendar days following the last day of the event, an extension may be requested in writing if additional time is required due to unforeseen circumstances or emergency. (See policy for details.)

Last day of Event

7-19-15

Received date

10-16-15

days

87

<p style="text-align: center;"> <b>Rotary Clubs of Roswell Desert Sun Classic</b>  <b>Charity Golf Championship</b>  <b>July 17 - 19, 2015</b>  <b>As of September 30, 2015</b>  <b>Submitted By: Karen Rogers Melton</b> </p>
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**Event Revenue:**

Sponsorships & Support	\$55,457.00
Participant Fees	<u>\$35,550.00</u>
Total Revenue	<u>\$91,007.00</u>

**Event Expenses:**

Advertising	\$6,144.57
Spring River - Carts & Green Fees	\$5,170.00
Prizes & Pro Payouts	\$40,707.98
Postage	\$238.53
Liability Insurance	\$779.51
PGA Fees	\$721.00
Other Expenses	<u>\$3,106.56</u>

Total Expenses	<u>\$56,868.15</u>
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Net Before Payout To Charity	<u>\$34,138.85</u>
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**Lodgers Tax Eligible:**

\$1,228.00

\$1,228.00

**Charity Payout:**

Rotary Clubs of Roswell	\$1,000.00
CASA	\$20,000.00
Salvation Army	\$10,000.00
ENMU-Roswell Foundation	\$5,000.00

Total Charity Payout	<u>\$36,000.00</u>
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Net Income	<u>(\$1,861.15)</u>
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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 13.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Consider approval of funding for the Roswell Kick It! 3v3 Soccer Tournament "Under the Lights" in the amount of \$1,500.

**BACKGROUND:**

The Roswell Kick It! 3v3 Soccer Tournament was funded in 2013 & 2015. The Roswell Kick It! 3v3 Soccer Tournament is scheduled for June 24-25, 2016. This event is a two day soccer tournament which starts in the evening until midnight with approximately 100 teams coming from all over New Mexico. Out of the expected 2000 attendees, half will be from out-of-town. The location of the event is Cielo Grande Fields.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

The applicant requested funding in the amount of \$3,462.50

Lodgers' Tax Fund

- Visitor Promotion
  - Roswell Kick It! 3v3 Soccer Tournament - budgeted.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Occupancy Tax Board recommended funding for this event at their meeting on March 29, 2016. The Finance Committee recommended funding at their meeting on Thursday, April 7, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of funding for the Roswell Kick It! 3v3 Soccer Tournament in the amount of up to \$1,500. of eligible expenses at 50% on a reimbursement basis.

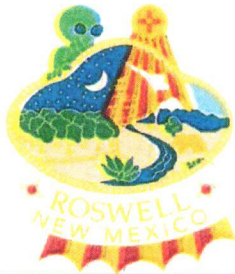
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**Attachments**

Kick It 3v3 Soccer

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## CITY OF ROSWELL –SPECIAL EVENT LODGERS' TAX FUNDS – APPLICATION

NAME OF EVENT: Roswell Kick It 3v3 Soccer Tournament "Under The Lights"	
DATE(S) OF EVENT: June 24-25, 2016	(application required 90 days prior to event)
NAME OF ORGANIZATION APPLYING FOR FUNDING: R Y S A	

DESCRIBE EVENT: This will be a two day soccer event that is averaging around 100 teams per event. The event will start each evening and will usually run until midnight. The lighted fields at Cielo Grande Recreation Area will be the preferred spot for the tournament.

LOCATION OF EVENT: Cielo Grande Lighted Fields and outer areas.  
HOW WILL YOU ADVERTISE AND MARKET THE EVENT? We will advertise through News Papers, Radio ads, flyer distribution, Email blasts, and banners.

HOW WILL ATTENDANCE AND ORIGIN BE MEASURED? We will present team rosters and collect surveys during the tournament.

ESTIMATED TOTAL # OF ATTENDEES: 2000 EST. # ATTENDEES FROM OUTSIDE CHAVES CO.: 1000

HAVE YOU DISCUSSED SPECIAL ROOM PACKAGES DURING YOUR EVENT WITH A ROSWELL LODGING FACILITY? Not Yet

WHAT PERCENTAGE OF YOUR MARKETING BUDGET WILL BE USED OUTSIDE OF ROSWELL? 50 %

WILL YOU HAVE A WEBSITE FOR YOUR EVENT? Yes

EVENT WEBSITE (if applicable): www.3v3soccer.com

LIST FULL AMOUNT OF MARKETING/ADVERTISING and OTHER ELIGIBLE EXPENSES ON PAGE 2.

**REMEMBER: FUNDING IS PROCESSED ON A REIMBURSEMENT BASIS AT 50% OF ELIGIBLE EXPENSES UP TO THE AMOUNT APPROVED (a one-to-one match)**

A REQUEST OF \$25,000 and up may require a signed contract with the City of Roswell.

**PAID receipts for eligible expenses must be turned in for reimbursement.**

Requested Funding must equal 50% or less of the Total Eligible Expenses listing on Page 2

AMOUNT REQUESTED \$ 3,462.50

**IF YOU ARE REQUESTING SPONSORSHIP, PERSONNEL OR EQUIPMENT FROM ANY CITY DEPARTMENT - COMPLETE ON PAGE 2.**

### RULES AND REGULATIONS

I UNDERSTAND THAT THESE ARE PUBLIC FUNDS AND THEY ARE TO BE ADMINISTERED ACCORDING TO STATE LAW AND CITY ORDINANCES, AND I AGREE TO SUBMIT A FOLLOW UP REPORT WITH A FINANCIAL STATEMENT WITHIN NINETY (90) DAYS FOLLOWING THE EVENT OR I MAY FORFEIT THE FUNDS AS WELL AS ELIGIBILITY FOR FUTURE FUNDING. I AGREE TO USE THE CITY LOGO AND/OR "PAID IN PART BY THE CITY OF ROSWELL LODGERS' TAX" ON ALL ADVERTISING, VERBAL OR WRITTEN. I UNDERSTAND THAT THIS APPLICATION CONSTITUTES A CONTRACT BETWEEN THE CITY OF ROSWELL AND THE ORGANIZATION TO RECEIVE THE FUNDS, SHOULD THE FUNDS BE APPROVED BY THE OCCUPANCY TAX ADVISORY BOARD AND THE CITY OF ROSWELL GOVERNING BODY. I UNDERSTAND FUNDING MAY BE DENIED OR THAT APPROVED FUNDING AMOUNTS MAY DIFFER FROM THE AMOUNT REQUESTED ON THE APPLICATION. I ALSO UNDERSTAND THAT THE DISBURSEMENT OF FUNDS IS ON A DRAWDOWN REIMBURSEMENT BASIS (matched by Lodgers' Tax at 50% up to the funded amount, a one-to-one match).

NAME (PRINT) OF APPLICANT MAKING REQUEST: Andrew Francis		
SIGNATURE OF APPLICANT: <i>Andrew Francis</i>		
(SEND CHECK TO) ADDRESS / CITY / STATE / ZIP: R Y S A P.O. Box 1472 Roswell, NM 88202-1472		
PHONE: 575-513-9412	CELL: Same	E-MAIL: andyfrancis21@live.com
DATE SUBMITTED: MAR 22 2016	90 DAYS? <input checked="" type="checkbox"/> N	TO BE PRESENTED AT MEETING ON: 3/29/16 3-29-16

➤ ATTACH TOTAL PROPOSED BUDGET FOR EVENT ALONG WITH A DETAILED ADVERTISING/MARKETING BUDGET.

➤ PLEASE FEEL FREE TO ADD ADDITIONAL PAGES, SAMPLES OF ADS OR BROCHURE ARTWORK.

➤ PLEASE PROVIDE ORIGINAL APPLICATION PLUS (+) 5 COPIES OF APPLICATION, ADDITIONAL PAGES AND /OR SAMPLES

➤ MAIL OR DELIVER TO CITY OF ROSWELL, c/o Lodger Tax Grant Request, 425 N RICHARDSON, (P O BOX 1838), ROSWELL, NM 88202-1838

\* SEE MEETING SCHEDULE FOR APPLICATION DUE DATES. (These are "Received by" dates, not postmarked dates.) Revised Jan 7, 2016



NAME OF EVENT:	Roswell KickIt 3v3 Soccer Tournament "Under The Lights"
DATE(S) OF EVENT:	June 24-25, 2016
NAME OF ORGANIZATION:	RYSA

**PROPOSED ELIGIBLE EXPENSES:**

ELIGIBLE EXPENSES:	LOCAL AMOUNT	OUT-OF-TOWN AMOUNT	TOTAL AMOUNT	Out-of-Town %
NEWSPAPER	300.00	500.00	800.00 0.00	62%
MAGAZINE			0.00	
RADIO	300.00	1200.00	1500.00 0.00	80%
TELEVISION			0.00	
INTERNET		25.00	25.00 0.00	100%
PRINTING (brochures, posters, cards)	300.00 400.00	100.00	400.00 0.00	0% 25%
MAILING	200.00		200.00 0.00	0%
T-SHIRTS (or other marketing items)	2500.00 750.00	1750.00	2500.00 0.00	0% 70%
SECURITY	500.00		500.00 0.00	0%
CLEAN UP (Sanitation)	500.00		500.00 0.00	0%
OTHER: Fire Dept./EMT	500.00		500.00 0.00	0%
SUB TOTALS	5,000.00 0.00	1725.00 0.00	6,925.00 0.00	25% 51%

TOTAL ELIGIBLE EXPENSES: \$ 6,925.00 0.00 (50% = \$ 3,462.50 0.00)  
list the 50% or less as the amount requested on page 1.

**IF YOU ARE REQUESTING SPONSORSHIP FROM A CITY OF ROSWELL DEPARTMENT – COMPLETE THE FOLLOWING:**

DEPARTMENT	TYPE OF SPONSORSHIP	ESTIMATED COST	*City use only*

**IF YOU ARE REQUESTING CITY EMPLOYEES – PLEASE COMPLETE THE FOLLOWING:**

DEPARTMENT	TYPE OF WORK REQUESTED	# OF EMPLOYEES	DATES/TIME REQUIRED	TOTAL HOURS

**IF YOU ARE REQUESTING CITY EQUIPMENT – PLEASE COMPLETE THE FOLLOWING:**

DEPARTMENT	TYPE OF EQUIPMENT	EST COST per day	# DAYS REQUIRED	TOTAL COST *City use only*

## **2015 EVENT INFORMATION:**

**Roswell Kick It! 3-v-3 Soccer Tournament “Under the Lights”:  
July 10 - 11, 2015**

**Awarded Amount: \$1,500.00      Reimbursed Amount: \$772.85**

1. Event Report
2. Financial Report
3. Survey Summary





CITY OF ROSWELL  
LODGERS' TAX FUNDS  
EVENT REPORT

NAME OF EVENT: <u>Roswell KickIt 3V3 Soccer Tournament "Under The Lights"</u>	
DATE(S) OF EVENT: <u>July 10-11, 2015</u>	
NAME OF ORGANIZATION SPONSORING EVENT: <u>RYSA</u>	
NAME OF CONTACT PERSON: <u>Andrew Francis</u>	
MAILING ADDRESS: <u>P.O. Box 1472 Roswell, N.M. 88202 -1472</u>	
CITY / STATE / ZIP: <u>Roswell, N.M. 88202-1472</u>	
PHONE: <u>575-513-9412</u>	CELL PHONE: <u>Same</u>
E-MAIL ADDRESS (optional): <u>andyfrancis@live.com</u>	

REPORT ON THE OUTCOME OF THE EVENT:

This tournament was successful at gathering 102 teams of between 5-6 people per team, not to mention friends and family who came to support the players. This was a 2-night tournament that usually lasted to at least 11:00 P.M. both nights. We received a great number of positive comments from various teams expressing their delight in the tournament with plans to return in 2016.

DESCRIBE ADVERTISING USED AND IMPACT ON BRINGING VISITORS TO ROSWELL: (Attach copies or photos)

Advertising was done by radio, newspaper, email, Facebook, flyers and banners. The radio transcript failed to mention support by The City of Roswell Lodgers Tax. The newspaper ads, flyers and banners all mention The City of Roswell Lodger's Tax Support.

WHAT WAS ESTIMATED VISITOR ATTENDANCE? I would estimate 2000 people present at Cielo Grande.

HOW WAS IT MEASURED? Surveys were completed surveys were submitted by teams. Unfortunately the sudden thunderstorm chimed several of them and others were lost in transition due to Carolyn Madison resigning from RYSA Board.

WHAT WAS THE ESTIMATED HOTEL/MOTEL, LODGING IMPACT? I can not give you a definite answer.

DO YOU PLAN TO REQUEST LODGERS' TAX FUNDS NEXT YEAR? Yes

ADDITIONAL REMARKS TO THE OTB:

SIGNATURE: Andrew Francis

DATE: 11-20-15

- Attach copies or photos (see policy for documentation details) of advertising used.
- Provide sample of event survey used.
- Provide a complete summary of survey results for merchant, restaurant and lodging impact (how many room nights).
- Event Report is due ninety (90) calendar days following the last day of the event, an extension may be requested in writing if additional time is required due to unforeseen circumstances or emergency. (See policy for details.)

Last day of Event 7-11-15

Received date 11-30-15

days 142

(extension)





## SPECIAL EVENT LODGERS' TAX FUNDING - FINANCIAL STATEMENT

EVENT NAME: <i>Roswell Kick It 3v3 Soccer Tournament - Under the Lights</i>
Event Date(s): <i>July 10-11 2015</i>
Statement date:
Provided by: <i>Andrew Francis</i>

FULL EVENT REVENUE:	
Admissions	\$ <i>0</i>
Registrations	\$ <i>10,000.00</i>
Donations	\$ <i>0</i>
Sale of Items	\$ <i>200.00</i>
Vendor rental	\$ <i>500.00</i>
	\$
	\$
	\$
	\$
	\$
	\$
<b>TOTAL REVENUE</b>	\$ <i>10,700.00</i>

FULL EVENT EXPENSES:		*LODGERS' TAX ELIGIBLE ONLY EXPENSES:
Advertisement **	\$ <i>1290.28</i>	\$ <i>1,000.00</i>
Marketing **	\$	\$
Promotional **	\$ <i>4575.00</i>	\$ <i>1942.50</i>
Entertainment	\$ <i>—</i>	\$
Food, Beverages, Snacks	\$ <i>483.79</i>	\$
Judges/Referees	\$ <i>3561.68</i>	\$
Rental – Facility	\$	\$
Rental – Equipment	\$	\$
Sanitation **	\$ <i>317.13</i>	\$ <i>317.13</i>
Security **	\$ <i>518.75</i>	\$ <i>518.75</i>
Police & Fire **	\$ <i>500</i>	\$ <i>500.00</i>
Canopies	\$ <i>408.35</i>	\$
Field Maps	\$ <i>83.37</i>	\$
Light Tower Rentals	\$ <i>2694.65</i>	\$
	\$	\$
<b>TOTAL EXPENSES</b>	\$ <i>14,433.00</i>	\$ <i>4,278.38</i>

TOTAL REVENUE: \$ <i>10,700</i>	TOTAL EXPENSES: \$ <i>14,433.00</i>	PROFIT OR <u>LOSS</u> : \$ <i>3,733.00</i>
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\* The amount of the expense which is eligible for Lodgers' Tax funding may be less than the Full Event Expense.

\* Lodgers' Tax Eligible Expenses must equal or exceed the total of all the requests for reimbursement invoice listings.

\*\* Lodgers' Tax Eligible categories only: Advertisement, Marketing, Promotional, Sanitation, Security, Police & Fire



## SPECIAL EVENT LODGERS' TAX FUNDING - SURVEY SUMMARY

EVENT NAME:	Roswell KickIt 3v3 Soccer Tournament - Under The Lights
Event Date(s):	July 10-11 2015
Statement date:	
Provided by:	Andrew Francis

### EVENT ATTENDANCE:

TOTAL VISITOR ATTENDANCE:	2000+
OUT-OF-TOWN VISITOR ATTENDANCE:	500+
OUT-OF-COUNTRY VISITOR ATTENDANCE:	

Total Visitors include all, Out-of-Town are broken out of total but include Out-of-Country  
Out-of-Country are broken out of the Out-of-Town

### LODGING IMPACT:

HOTEL/MOTEL:	Lost in transition
RV PARKS:	
BED & BREAKFAST:	
TOTAL ROOM NIGHTS	

Room nights = # of rooms x # of nights (not people in rooms)

### ROSWELL ECONOMIC IMPACT:

RESTAURANTS:	
FUEL:	
SHOPPING:	

If your survey asked these questions please provide results

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 14.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** Sharon Coll

**CHAIR:** N/A

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**ACTION REQUESTED:**

Consider approval of the minutes from the March 10, 2016 Regular City Council meeting.

**BACKGROUND:**

Minutes from the March 10, 2016 Regular City Council meeting.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Council consideration of the minutes from the March 10, 2016 Regular City Council meeting.

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**Attachments**

City Council Regular Minutes March 10, 2016

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Regular Meeting of the Roswell City Council  
Held in the Bassett Auditorium at the Roswell Museum and Arts Center

Thursday, March 10, 2016 at 6:00 p.m.

The meeting convened with Mayor Kintigh presiding and Councilors Denny, Sandoval, Grant, Henderson, Mackey, Foster, Sanchez, Oropesa, and Best being present with Councilor Perry being absent. Councilor Foster led in the Pledge of Allegiance and Councilor Henderson led in Prayer.

Notice of this meeting was given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 15-56.

Councilor Sandoval moved to approve the agenda for the March 10, 2016 regular City Council meeting to include the following: NON-ACTION ITEMS: Zika Virus presentation, Clean and Safe Program update; PUBLIC HEARING: Proposed Ordinance 16-05 – placing certain limitation on drilling of new domestic wells within the city limits; CONSENT ITEMS: BIDS and RFP's: GSA Contract GS25F0062M lease and maintenance agreement for multi-functional copier machines from PTS Office Systems Inc. RIAC Leases: Authorization for Zachary Canright and Jared Putman to renew their current lease agreement, Authorization for Thurston Woods to renew his current lease agreement, Authorization for Zen Sportz Inc. to renew their current lease agreement, Authorization for Birdman Air Enterprise to amend their current lease agreement. Resolutions: Resolution 16-17 – Weeds, Resolution 16-18 – Condemnations. Lodgers' Tax Request: 6<sup>th</sup> Annual Xcel Energy Tour de Ocho Millas, 2016 Roswell Hike It! 4 on 4 Charity Flag Football Tournament. Minutes: February 11, 2016 Regular City Council meeting and February 29, 2016 Special City Council meeting; NEW BUSINESS/REGULAR ITEMS: Resolution 16-19 – budget amendment for overtime for police services at the Eastern New Mexico State Fair, Resolution 16-14 – adoption of the annual Community Development Block Grant Policies and Plans, Resolution 16-15 – participation in the Capital Outlay Program administered by the New Mexico Department of Transportation, Resolution 16-16 – participation in the Capital Outlay Program administered by the New Mexico Department of Transportation, Resolution 16-20 – budget amendment for Cell #4 at the Landfill for applicable Gross receipts tax, Resolution 16-21 – budget amendment for the UFO Festival, Resolution 16-22 – mid-year budget amendment for FY2016. Requests: Requests of appoints for the Chief of Police, City Treasurer and the City Clerk, Election of Mayor Pro Tem, Proposed Ordinance 16-06 – advertise for a public hearing regarding the Cable One Franchise, Proposed Ordinance 16-07 – advertise for a public hearing regarding the Convention Center Fees, approval of the Audited Financial Statements for Fiscal Year Ending June 30, 2015; and Department Reports. Councilor Grant was the second. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

NON-ACTION ITEMS

Zika Virus Presentation. Karen Sanders, Roswell/Chaves County Emergency Manager, gave a presentation on the Zika virus. The World Health Organization has declared the Zika virus an international public health emergency, prompted by growing concern that it could cause birth



defects. Zika virus is transmitted to people primarily through the bite of an infected mosquito, though there have also been reports of transmission through sexual contact. Concern is for pregnant women or women trying to get pregnant. The CDC is still investigating the association between Zika virus infection and birth defects, including microcephaly, which is a condition where a baby's head is much smaller than expected. There are only two kinds of mosquitoes in the United States that are able to transmit Zika virus, and have been found in some parts of southern New Mexico. Ways to prevent Zika virus include:

- Avoid or limit outdoor activities during peak mosquito times
- Consider postponing travel to affected areas if you are pregnant or could become pregnant
- Prevent mosquito bites

Clean and Safe Program Update. Mike Mathews, Special Services Administrator, gave an update on the Clean and Safe Program. The program allows property owners the opportunity to remove a dilapidated structure from a property and have the tipping fees waved. A demolition permit must be obtained from Code Enforcement. Once the \$5 permit is obtained, a building inspector will insure that the property is free of asbestos. Following the inspections, the owner can then move forward with removal of the structure and all tipping fees will be waved at the landfill. This year the program will operate March 1<sup>st</sup> – October 31<sup>st</sup>.

Mr. Mathews gave a briefing of the distemper outbreak at the shelter. The police department has been working very closely with local veterinarians to address the issue. A temporary facility with portable kennels has been set up on east Alameda (old city garage) where all new intakes will be housed.

#### PUBLIC PARTICIPATION ON AGENDA ITEMS

Participants are mentioned on each item.

#### PUBLIC HEARINGS

Proposed Ordinance 16-05 – To hold a public hearing on Proposed Ordinance 16-05 which would place certain limitations on drilling of new domestic wells within the city limits. Councilor Mackey moved to hold a public hearing on Proposed Ordinance 16-05. Councilor Sandoval was the second. Mr. Zarr discussed Proposed Ordinance 16-05 stating it will amend Chapter 26 of the Roswell City Code by adding new sections 26-6, 26-7, 26-8 and 26-9, which will place limitations on the drilling of new domestic wells within the City limits.

IN FAVOR: Erin Baylock

OPPOSED: Gary Key

Councilor Henderson moved to amend the proposed ordinance by adopting the amendments contained in Version 2. Councilor Grant was the second. A roll call vote was as follows: Tabitha Denny-yes, Art Sandoval-yes, Caleb Grant-yes, Steve Henderson-yes, Natasha Mackey-yes, Barry Foster-yes, Savino Sanchez-yes, Juan Oropesa-yes, Jeanine Best-yes and the motion

passed with Councilor Perry being absent. Proposed Ordinance 16-05 will be acted on at a later date. The Legal and Infrastructure Committees will have a joint meeting to discuss this item.

## CONSENT ITEMS

### Bids & RFP'S

Request to approve GSA Contract No. GS25F0062M – Lease and maintenance agreement for multi-functional copier machines from PTS Office Systems, Inc. In total, the City owns 229 units which includes copiers, printers and fax machines. The lease would replace all of the units with 55 multi-functioning copiers. The total savings will be \$57,575 per year.

### RIAC Leases

Request approval to authorize Zachary Canright and Jared Putman, as individuals, to renew their current lease agreement on "T" Hangar Building No. 120, Space 3. Zachary Canright and Jared Putman lease the 1,002 square feet building for the purpose of aircraft storage and maintenance. New rent amount is \$173 monthly; \$2,076 annually. Rent adjustment is 2.37%. Zachary Canright and Jared Putman have been customers since February 2015. The term is from April 1, 2016 through March 31, 2017.

Request approval to authorize Thurston Woods, an individual, to renew his current lease agreement on a portion of Building No. 1776. Thurston Woods leases the 1,798 square feet building for the purpose of storage of personal items. New rent amount is \$167 monthly; \$2,004 annually. Rent adjustment is 2.45%. Thurston Woods has been a customer since April 2010. The term is from April 1, 2016 through March 31, 2017.

Request to authorize Zen Sportz, Inc., a New Mexico Corporation, to renew their current lease agreement on office space in Building No. 1, the Terminal. Zen Sportz, Inc., leases the 100 square feet office space for the purpose of a business office. New rent amount is \$103 monthly; \$1,236 annually. Rent adjustment is 3.00%. Zen Sportz, Inc., has been a customer since February 2015. The term is from April 1, 2016 through March 31, 2017.

Request for Birdman Air Enterprise, Inc., a New Mexico Corporation, to amend their current lease agreement to add an additional 6,250 square feet to their leasehold in Building No. 1770. Birdman Air Enterprises, Inc., leases the building for the purpose of an office and storage of tools and parts. They are requesting an additional 6,250 square feet. Rent is increases by \$325 per month. Total new rent amount is \$1,297.73 per month.

Resolution 16-17 – Weeds. Approximately four (4) separate properties within the City.

Resolution 16-18 – Condemnations. Approximately eight (8) dilapidated structures within the City.

### Lodgers' Tax Request

Request approval of funding for the 6<sup>th</sup> Annual Xcel Energy Tour de Ocho Millas in the amount of \$2,000. The 6<sup>th</sup> Annual Xcel Energy Tour de Ocho Millas has been funded since 2012. The event is scheduled for September 10, 2016 at Bottomless Lakes State Park.

Request approval of funding for the 2016 Roswell Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament in the amount of \$20,000. The Roswell Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament has been funded since 2004. The event is scheduled for May 27-29, 2016 at Cielo Grande Recreation Area.

#### NEW BUSINESS/ REGULAR ITEMS

Resolution 16-19 – budget amendment for overtime for police services at the Eastern New Mexico State Fair - \$11,170. Councilor Grant moved to approve Resolution 16-19. Councilor Henderson was the second. Ms. Garcia gave a presentation on Resolution 16-19 stating that overtime for police presence at the event is an allowable expense of Lodgers' Tax funds. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Resolution 16-14 – adoption of the annual Community Development Block Grant Policies and Plans. Councilor Best moved to approve Resolution 16-14. Councilor Sandoval was the second. Mr. Morris gave a presentation on Resolution 16-14. In order to receive funding, local governments are required to adopt the following plans: Citizen Participation Plan, Fair Housing Resolution and Assessment, Residential Anti-Displacement and Relocation Assistance, Section 3 Plan and Procurement Code Certification. This is an annual, housekeeping resolution. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Resolution 16-15 – participation in the Capital Outlay Program administered by the New Mexico Department of Transportation (appropriation of \$200,000). Councilor Best moved to approve Resolution 16-15. Councilor Sandoval was the second. Mr. Najar discussed Resolution 16-15 stating the resolution needs to be submitted to NMDOT who is administering Capital Outlay Appropriation 12-1503. The appropriation of \$200,000 is earmarked for 9<sup>th</sup> Street and Roswell Convention Center parking. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Resolution 16-16 – participation in the Capital Outlay Program administered by the New Mexico Department of Transportation (appropriation of \$325,000). Councilor Best moved to approve Resolution 16-16. Councilor Sandoval was the second. Mr. Najar discussed Resolution 16-16 stating the resolution needs to be submitted to NMDOT who is administering Capital Outlay Appropriation 13-1830. The appropriation of \$325,000 is earmarked for Union and Montana Streets widening to four lanes. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Resolution 16-20 – budget amendment for Cell #4 at the landfill for applicable Gross Receipts Tax in the amount of \$107,938.02. Councilor Grant moved to approve Resolution 16-20. Councilor Henderson was the second. Ms. Garcia gave a presentation on Resolution 16-20. The

budget amendment is in the amount of \$107,938 from the Solid Waste Reserves (Sanitation). A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Resolution 16-21 – budget amendment for UFO Festival in the amount of \$80,000. Councilor Grant moved to approve Resolution 16-21. Councilor Sandoval was the second. Ms. Garcia gave a presentation on Resolution 16-21 stating this is a housekeeping item as funding for the event has been previously approved by City Council. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Resolution 16-22 – Mid-Year budget amendment for FY 2016. Councilor Grant moved to approve Resolution 16-22. Councilor Henderson was the second. Mr. Polasek gave a presentation on Resolution 16-22. If the City chooses to complete a Mid-Year budget, the governing body must approve it by resolution as required by the Department of Finance for the State of New Mexico. The Mid-Year budget will consist of project reductions impacting the General Fund, due to the decrease in revenue from gross receipts taxes. The proposed amendments will assist in alleviation a portion of the budget shortfall resulting from the current \$1.43 million reduction in revenues. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Request approval of the following appointments as recommended by Mayor Kintigh:

- Chief of Police – Philip Smith
- City Treasurer – Monica Garcia
- City Clerk – Sharon Coll

Councilor Sandoval moved to approve the appointments as recommended by Mayor Kintigh: Chief of Police – Philip Smith, City Treasurer – Monica Garcia and City Clerk – Sharon Coll. Councilor Foster was the second. Ms. Coll stated this is a housekeeping item that is conducted after every Municipal Election. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Election of Mayor Pro Tem. Councilor Oropesa nominated Councilor Sanchez for Mayor Pro Tem and Councilor Sandoval nominated Councilor Best. A roll call vote was the following: Tabitha Denny-Councilor Best, Art Sandoval-Councilor Best, Caleb Grant-Councilor Best, Steve Henderson-Councilor Sanchez, Natasha Mackey-Councilor Sanchez, Barry Foster-Councilor Sanchez, Savino Sanchez-Councilor Sanchez, Juan Oropesa-Councilor Sanchez and Jeanine Best-Councilor Best. The roll call vote was 5-4 with Councilor Sanchez being nominated Mayor Pro Tem and Councilor Perry being absent.

Proposed Ordinance 16-06 – Request to advertise for a public hearing on Proposed Ordinance 16-06 – Cable One Franchise. Councilor Mackey moved to approve to advertise for a public hearing on Proposed Ordinance 16-06 – Cable One Franchise. Councilor Oropesa was the second. Mr. Zarr gave a presentation on Proposed Ordinance 16-06 stating Cable One currently operated under City Ordinance 04-04 which expired on January 1, 2015, but both the City and

Cable One have continued to operate under and honor the terms of this agreement. The terms of the new franchise agreement are substantially similar to the terms of the present franchise agreement under Ordinance 04-04. The new franchise agreement will expire on January 1, 2026 and will continue to provide one channel for PEG (Public, Education and Government) use. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Proposed Ordinance 16-07 – Request to advertise for a public hearing on Proposed Ordinance 16-07 – Convention Center Fees Ordinance. Councilor Mackey moved to approve to advertise for a public hearing on Proposed Ordinance 16-07 – Convention Center Fees Ordinance. Councilor Henderson was the second. Mr. Zarr discussed Proposed Ordinance 16-07. The proposed ordinance will amend Ordinance 13-09 of the Roswell City Code by renumbering the ordinance as part of Chapter 23 of the Roswell City Code, and amending the ordinance to improve the overall form. The proposed amendments will make the ordinance more specific to the City of Roswell to better reflect the intention of the governing body when Ordinance 13-09 was adopted. A voice vote was unanimous and the motion passed with Councilor Perry being absent.

Request approval of the Audited Financial Statements for Fiscal Year ending June 30, 2015. Councilor Grant moved to approve the Audited Financial Statements for Fiscal Year ending June 30, 2015. Councilor Henderson was the second. Ms. Garcia gave a presentation on the Audited Financial Statements for Fiscal Year ending June 30, 2015 stating the audited financial statements have been submitted to the State of New Mexico Auditor's Office whom have accepted the report. The audit includes one minor finding: 2015-001 – Federal Grant Compliance (timely/reporting). A voice vote was unanimous and the motion passed with Councilor Perry being absent.

#### PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None

#### ADJOURNMENT

Meeting adjourned at 7:57 p.m.

Approved on this 14<sup>th</sup> day of April, 2016.

(City Seal)

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DENNIS KINTIGH, MAYOR

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SHARON COLL, CITY CLERK

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 15.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** Sharon Coll

**CHAIR:** N/A

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**ACTION REQUESTED:**

Consider approval of the minutes from the City Council Workshop March 18, 2016 and March 19, 2016.

**BACKGROUND:**

Minutes from the City Council Workshop March 18, 2016 and March 19, 2016.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

City Council consideration of the minutes from the City Council Workshop March 18, 2016 and March 19, 2016.

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**Attachments**

Minutes Council Workshop March 18 and 19, 2016

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Roswell City Council Work Session  
Held in the Conference Room at the Roswell Chamber of Commerce  
Friday March 18, 2016 at 9:00 a.m.; day 1 workshop

The meeting convened with Mayor Dennis Kintigh presiding and Councilors Oropesa, Sanchez, Denny, Grant, Sandoval, Henderson and Best being present with Councilor Mackey participating by telephone. Councilors Perry and Foster were absent.

Notice of this meeting was given to the public in compliance with sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 15-56.

Review, discuss and provide direction regarding City strategic planning initiatives, budget, goals and objectives. Steve Polasek, City Manager, began the meeting by giving an update on the FY2016 Budget. Mr. Polasek then discussed the FY2017 Budget by addressing the budget background, budget calendar, financial projections, budget assumptions, core services and other funding sources.

FOR THE RECORD: Lunch break began at 11:50 a.m. Council was back in session at 12:27 p.m. with Councilors Mackey, Foster and Perry being absent.

Mr. Najar gave a Project Status Update which included a re-cap of 2016 budget highlights.

- Building renovations & facility improvements
- Parks & Recreation renovations
- Streets & sidewalks repairs

Mr. Najar discussed the GRT Bond Program which includes the following projects:

- Library roof rehabilitation
- Museum roof replacement
- Museum bridge-deck reconstruction
- Cemetery storage building roof replacement
- Transit Center roof replacement
- Design and construction of splash pad
- Street improvements

Mr. Morris gave a City Code Review Update. The major efforts to revise the City Code include:

- Create a City Code that is more intuitive for users.
- Create a City Code that includes all relevant materials currently not included.
- Create a Unified Land Development Code that will enhance the value of the City by implementing more sustainable development patterns and practices for the future.
- Using the code review work group to process this work.

FOR THE RECORD: Councilor Perry joined the workshop at 2:00 p.m.

Mayor Kintigh called for a recess at 2:10 p.m. and invited anyone interested in taking a Cahoon Park Pool tour to meet there and reconvene the workshop at 2:30 p.m.

FOR THE RECORD: Councilor Mackey participated in the Cahoon Park Pool tour.

ADJOURN

Day 1 workshop adjourned at 2:55 p.m.

Saturday, March 19, 2016 at 9:00 a.m.; day 2 workshop

The meeting convened with Mayor Dennis Kintigh presiding and Councilors Henderson, Sandoval, Oropesa, Foster, Sanchez, Best, Denny, Grant, Mackey and Perry being present.

Mr. Phillips discussed City Council goals and objectives.

- Process and expectations
- Environmental scan
- SWOT – strengths, weaknesses, opportunities and threats
- Vision, mission and values
- Strategic goals and objectives

FOR THE RECORD: Councilor Mackey left the workshop at 11:14 a.m. and returned at 12:10 p.m. Council went to recess at 11:30 a.m. and was back in session at 11:45 a.m.

Mr. Polasek discussed Council Rules of Order stating that they are a procedural rulebook that must be in accordance with local, state and federal laws. The rules of order help provide clear and consistent direction for council, staff and the public and also allow to address matters not contained within current laws, rules and regulations. Mayor Kintigh suggested the Council wait until after the budget time period is over to work on the Council Rules of Order. Multiple Councilors stated they would rather move forward with the development of a draft document as soon as possible. Councilors Grant, Oropesa and Denny were asked to work closely with Mr. Polasek, Mayor Kintigh and Mayor Pro Tem Sanchez in creating the document.

Mr. Mathews gave an annual review of boards, committees and commissions. The purpose of the review is to:

- Become familiar with current committee/board structures.
- Assess current roles and values within the City.
- Develop changes that align strategically with Council goals and objectives.

ADJOURN

Day 2 workshop adjourned at 1:47 p.m.

Approved on this 14<sup>th</sup> day of April, 2016.

(City Seal)

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Dennis Kintigh, Mayor

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Sharon Coll, City Clerk

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 16.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

---

**ACTION REQUESTED:**

Resolution 16-27 - Consider approval of Resolution 16-26 for a budget amendment for overtime at the Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament - \$3,000. (Grant/Garcia)

**BACKGROUND:**

The City Council at the March 10, 2016 meeting approved funding for the event. The Finance Committee at the March 3, 2016 meeting recommended approval of \$3,000 to help the tournament with overtime expenses of police presence. The overtime is an allowable expense of Lodger's Tax Funds.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Lodgers' Tax Reserves

- Lodger' Tax – Visitor Promotion PR - \$3,000

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Finance Committee recommended approval Resolution 16-27 budget amendment for overtime at the Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament for \$3,000 at their meeting on April 7, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of Resolution 16-27.

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**Attachments**

Resolution 16-27 Budget amendment for Hike It! & Spike It!

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**RESOLUTION NO. 16-27**

**A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO AMENDING THE BUDGET FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016.**

**WHEREAS**, the governing body of the City of Roswell, State of New Mexico, has previously developed a budget for the fiscal year 2015-2016, ending June 30, 2016; and

**WHEREAS**, the City desires to amend said budget for the overtime for police presence at the Hike It! & Spike It! 4-on-4 Charity Flag Football Tournament in the amount of \$3,000 from the Lodger's Tax Fund; and

**WHEREAS**, the overtime for police presence at the event is an allowable expense of Lodger's Tax Funds; and

**WHEREAS**, the City Council at their March 10, 2016 meeting approved funding from the Lodger's Tax Fund reserves for the Eastern New Mexico State Fair Event and the budget; and

**WHEREAS**, it is the majority opinion of the Governing Body that the proposed amended budget continues to meet fiscal requirements as currently determined for fiscal year 2016.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO** hereby adopts the budget adjustment hereinabove described and respectfully requests approval for same from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

**PASSED, ADOPTED, SIGNED AND APPROVED this 14<sup>th</sup> day of April, 2016.**

CITY SEAL ATTEST:

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**Dennis Kintigh, Mayor**

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**Sharon Coll, City Clerk**

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 17.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Resolution 16-28 - City Council is asked to consider Resolution 16-28 - Budget Amendment for FY2016 Budget Reductions.(Grant/Garcia)

**BACKGROUND:**

As you are aware, the City's Gross Receipts Tax (GRT) revenues are down 7% or \$1.6M for FY2016 thru March of this year (with three months remaining). The City has taken several measures to address the shortfall within our general fund while simultaneously working to protect our fund balance and service levels. In March of 2016, the City Council approved a mid-year budget reduction of \$832,367. These funds were originally derived primarily from projects that were supported by unencumbered monies remaining within the FY 2015 budget.

As our deficit continues to widen, our next step is to implement additional operating fund cost reductions by requesting each department reduce their current FY 2016 line item operating budgets by approximately 2-3 percent. This task, while not easy, was performed admirably by each department utilizing intricate knowledge of their particular operations to produce their best recommendations for potential cost reductions. The proposed savings has added \$1,086,515 of additional reductions resulting in total proposed FY 2016 reduction of \$1,918,882.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

See Exhibit A.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Finance Committee recommended approval of Resolution 16-28 at their April 7, 2016 meeting.

**STAFF RECOMMENDATION:**

City Council consideration of Resolution 16-28 as presented.

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**Attachments**

Resolution 16-28 - Budget Amendment for FY2016 Budget Reductions

Resolution 16-28 Exhibit

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**RESOLUTION NO. 16-28**

**A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO AMENDING THE BUDGET FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016.**

**WHEREAS**, the governing body of the City of Roswell, State of New Mexico, has previously developed a budget for the fiscal year 2015-2016, ending June 30, 2016; and

**WHEREAS**, the City desires to amend said budget in the amount of \$1,086,515, and

**WHEREAS**, the City Gross Receipts Tax is down 7% for FY2016; and

**WHEREAS**, the City is in Level I of the Contingency Plan adopted by Council in October 2015; and

**WHEREAS**, the City has experienced below revenue projections for seven of the nine months in FY2016, and

**WHEREAS**, which has driven administration to ask departments to reduce their current budget by 2-3%, and

**WHEREAS**, it is the majority opinion of the Governing Body that the proposed amended budget continues to meet fiscal requirements as currently determined for fiscal year 2016.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO** hereby adopts the budget adjustment hereinabove described and respectfully requests approval for same from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

**PASSED, ADOPTED, SIGNED AND APPROVED this 14<sup>th</sup> day of April, 2016.**

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**Dennis Kintigh, Mayor**

CITY SEAL

ATTEST:

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**Sharon Coll, City Clerk**



Exhibit A

Department	Description	Current Budget	2.00%	3.00%	Give Back
4011	Exec & Leg	30,807.00	616.14	924.21	
4021	Court	216,981.00	4,339.62	6,509.43	8,589.00
4031	Elections	48,550.00	971.00	1,456.50	
4041	Fin Admin	3,465,944.00	69,318.88	103,978.32	
4051	Purch	8,182.00	163.64	245.46	245.00
4061	Human Res	45,142.00	902.84	1,354.26	16,100.00
4071	Fac Maint	69,053.00	1,381.06	2,071.59	2,144.00
4074	Fleet Maint	3,684.00	73.68	110.52	35,983.00
4111	Police	2,252,601.00	45,052.02	67,578.03	234,679.00
4121	Fire	1,128,337.00	22,566.74	33,850.11	230,843.00
4131	Safety	10,473.00	209.46	314.19	
4151	Codes	514,290.00	10,285.80	15,428.70	12,134.00
4161	Animal Serv	300,316.00	6,006.32	9,009.48	19,762.00
4181	Civil Emergency	113,590.00	2,271.80	3,407.70	3,813.00
4192	Comm Enhance	25,894.00	517.88	776.82	36,065.00
4211	Library	471,321.00	9,426.42	14,139.63	46,819.00
4221	Museum	468,033.00	9,360.66	14,040.99	32,770.00
4231	Parks	1,306,272.00	26,125.44	39,188.16	35,000.00
4232	Zoo	329,654.00	6,593.08	9,889.62	17,800.00
4233	Golf	329,501.00	6,590.02	9,885.03	7,000.00
4261	Public Relations	57,712.00	1,154.24	1,731.36	
4631	IT	252,351.00	5,047.02	7,570.53	
4656	Dispatch	266,704.00	5,334.08	8,001.12	48,500.00
4658	Neighbor watch	167,992.00	3,359.84	5,039.76	6,623.00
4411	Cemetery	138,331.00	2,766.62	4,149.93	8,000.00
4511	Transit	514,657.00	10,293.14	15,439.71	16,095.00
4241	Rec Admin	190,691.00	3,813.82	5,720.73	
4242	Pool	59,870.00	1,197.40	1,796.10	
4243	RAC	116,662.00	2,333.24	3,499.86	7,750.00
4244	Yucca	386,037.00	7,720.74	11,581.11	25,144.00
4245	Basketball	12,998.00	259.96	389.94	
4246	Special Program	124,174.00	2,483.48	3,725.22	28,682.00
4323	Streets	2,866,583.00	57,331.66	85,997.49	205,975.00
		16,293,387.00	325,867.74	488,801.61	1,086,515.00

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 18.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Resolution 16-29 - Consider approval of Resolution 16-29 for a budget amendment for the Convention Center Feasibility Study for Gross Receipts Tax in the amount of \$3,593.75. (Grant/Garcia)

**BACKGROUND:**

The City Council approved a final budget for FY2016 to include \$50,000 for a Convention Center Feasibility Study out of the Convention Center Fee Fund. The gross receipts tax of \$3,593.75 was inadvertently omitted to the purchase order for the study.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Convention Center Fee Reserve.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Finance Committee recommended approval Resolution 16-29 Budget Amendment for the GRT for the Convention Center Feasibility Study at their meeting on April 7, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of Resolution 16-29.

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**Attachments**

Resolution 16-29 for a budget amendment for the Convention Center Feasibility Study for GRT

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**RESOLUTION NO. 16-29**

**A RESOLUTION OF THE CITY OF ROSWELL, NEW MEXICO AMENDING THE BUDGET FOR THE CITY OF ROSWELL FOR THE FISCAL YEAR ENDING JUNE 30, 2016.**

**WHEREAS**, the governing body of the City of Roswell, State of New Mexico, has previously developed a budget for the fiscal year 2015-2016, ending June 30, 2016; and

**WHEREAS**, the City desires to amend said budget for the Gross Receipts Tax for the Convention Center Feasibility Study in the amount of \$3,593.75 from Convention Center Fee Fund reserves; and

**WHEREAS**, the City Council approved a final budget for FY2016 to include \$50,000 for a Convention Center Feasibility Study from the Convention Center Fee Fund; and

**WHEREAS**, it is the majority opinion of the Governing Body that the proposed amended budget continues to meet fiscal requirements as currently determined for fiscal year 2016.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO** hereby adopts the budget adjustment hereinabove described and respectfully requests approval for same from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

**PASSED, ADOPTED, SIGNED AND APPROVED this 14<sup>th</sup> day of April, 2016.**

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**Dennis Kintigh, Mayor**

CITY SEAL

ATTEST:

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**Sharon Coll, City Clerk**

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 19.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** General Service

**CONTACT:** Jonathan Phillips

**CHAIR:** Tabitha Denny

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**ACTION REQUESTED:**

Resolution 16-30 - Consider approval of Resolution 16-30 the decommissioning of the Cahoon Park Pool.  
(Denny/J. Phillips)

**BACKGROUND:**

Cahoon Pool was built in the mid-1930s and has reached far beyond its intended lifespan. Roswell has certainly gotten its money's worth, and then some, from the approximately 80-year-old facility.

Issues include aging and unreliable mechanical equipment used in the water treatment system, structural and electrical issues in the bathhouse, a deteriorated piping network and safety concerns based on the earlier design of the facility, from areas within the pool itself to around the surrounding decking. There could also be potential issues with meeting newer federal and state environmental and health regulations concerning pools.

Currently, additional public swim and aquatic opportunities are available at NMMI and ENMU-R. Staff has begun working with our community partners to potentially further their current public offerings.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Continual and anticipated expenses with trying to keep an obsolete pool running include \$448,000 invested in the last eight years.

Annual operating budget for the pool is about \$175,000, but produces only about \$22,000 in revenue each year, resulting in a net loss of more than \$150,000.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Infrastructure Committee and General Services Committee recommended approval of Resolution 16-30 at their joint meeting on April 8, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of Resolution 16-30 decommissioning of the Cahoon Park Pool.

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**Attachments**

Resolution 16-30 Decommission Cahoon Pool

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**City of Roswell**  
**Resolution 16-30**

**A RESOLUTION OF THE CITY OF ROSWELL, NM DIRECTING STAFF TO PROCEED  
WITH DECOMMISSIONING OF THE POOL AT CAHOON PARK.**

**WHEREAS**, the City of Roswell owns the property known as the Cahoon Park; and

**WHEREAS**, Cahoon Park includes a pool and bathhouse facilities; and

**WHEREAS**, the Cahoon Park pool and facilities were constructed over 80 years ago for use by the citizens of the community; and

**WHEREAS**, the Cahoon Park pool has operated well beyond the intended lifespan; and

**WHEREAS**, the Cahoon Park pool has significant structural and mechanical issues; and

**WHEREAS**, the pool and facilities are no longer in functional use and presents a safety hazard to the community; and

**NOW THEREFORE**, be it resolved that the City of Roswell supports the decommissioning of the pool located at Cahoon Park.

**PASSED, APPROVED, SIGNED, AND ADOPTED** this 14th day of April 2016.

CITY SEAL:

\_\_\_\_\_  
Dennis Kintigh, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Coll, City Clerk

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 20.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Consider approval of funding for the 2016 Bottomless Triathlon (July 9, 2016) in the amount of \$2,000.

**BACKGROUND:**

The Bottomless Triathlon has been funded since at least 2004. The 2016 Bottomless Triathlon is scheduled for July 9, 2016. This event is one of the oldest races in New Mexico, with 2016 being the 33<sup>rd</sup> year held. The Triathlon consists of swimming, cycling and running. From the expected 300 attendees, 200 will be from out-of-town. The location of the event is Bottomless Lakes State Park.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Lodgers' Tax Fund

- Visitor Promotion
  - 2016 Bottomless Triathlon - budgeted.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Occupancy Tax Board recommended funding for this event at their meeting on March 29, 2016. The Finance Committee recommended funding at their meeting on Thursday, April 7, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of funding for the 2016 Bottomless Triathlon in the amount of up to \$2,000 of eligible expenses at 50% on a reimbursement basis.

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**Attachments**

Bottomless Triathlon

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## CITY OF ROSWELL –SPECIAL EVENT LODGERS' TAX FUNDS – APPLICATION

NAME OF EVENT:

2016 BOTTOMLESS TRIATHLON

DATE(S) OF EVENT: JULY 9, 2016

(application required 90 days prior to event)

NAME OF ORGANIZATION APPLYING FOR FUNDING:

BOTTOMLESS TRIATHLON

DESCRIBE EVENT:

ONE OF THE OLDEST RACES IN NEW MEXICO, 2016 BEING THE 33RD YEAR.

A "SPRINT" TRIATHLON CONSISTING OF SWIMMING, BICYCLING AND RUNNING.

A GREAT VENUE, PROFESSIONALLY TIMED EVENT WITH THE LOWEST ENTRY FEES.

FREE TO YOUTH UNDER THE AGE OF 18. BOTH INDIVIDUAL AND RELAY DIVISIONS

LOCATION OF EVENT:

BOTTOMLESS LAKES STATE PARK - NEW MEXICO'S 1ST STATE PARK

HOW WILL YOU ADVERTISE AND MARKET THE EVENT?

PRINTED FLYERS DISTRIBUTED TO EARLIER EVENTS, SOCIAL MEDIA, DIRECT EMAIL

T-SHIRTS, INDUSTRY MAGAZINE ADVERTISEMENT AND ONLINE REGISTRATION & RESULTS

HOW WILL ATTENDANCE AND ORIGIN BE MEASURED?

ONLINE REGISTRATION 7 EVENT SURVEY

ESTIMATED TOTAL # OF ATTENDEES:

300

EST. # ATTENDEES FROM OUTSIDE CHAVES CO.:

200

HAVE YOU DISCUSSED SPECIAL ROOM PACKAGES DURING YOUR EVENT WITH A ROSWELL LODGING FACILITY? YES

WHAT PERCENTAGE OF YOUR MARKETING BUDGET WILL BE USED OUTSIDE OF ROSWELL?

MOST

%

WILL YOU HAVE A WEBSITE FOR YOUR EVENT? YES.

EVENT WEBSITE (if applicable): facebook.com/BottomlessTriathlon/

LIST FULL AMOUNT OF MARKETING/ADVERTISING and OTHER ELIGIBLE EXPENSES ON PAGE 2.

REMEMBER: FUNDING IS PROCESSED ON A REIMBURSEMENT BASIS AT 50% OF ELIGIBLE EXPENSES UP TO THE AMOUNT APPROVED

(a one-to-one match)

A REQUEST OF \$25,000 and up may require a signed contract with the City of Roswell.

PAID receipts for eligible expenses must be turned in for reimbursement.

Requested Funding must equal 50% or less of the Total Eligible Expenses listing on Page 2

AMOUNT REQUESTED \$ 2,000.00

IF YOU ARE REQUESTING SPONSORSHIP, PERSONNEL OR EQUIPMENT FROM ANY CITY DEPARTMENT - COMPLETE ON PAGE 2.

### RULES AND REGULATIONS

I UNDERSTAND THAT THESE ARE PUBLIC FUNDS AND THEY ARE TO BE ADMINISTERED ACCORDING TO STATE LAW AND CITY ORDINANCES, AND I AGREE TO SUBMIT A FOLLOW UP REPORT WITH A FINANCIAL STATEMENT WITHIN NINETY (90) DAYS FOLLOWING THE EVENT OR I MAY FORFEIT THE FUNDS AS WELL AS ELIGIBILITY FOR FUTURE FUNDING. I AGREE TO USE THE CITY LOGO AND/OR "PAID IN PART BY THE CITY OF ROSWELL LODGERS' TAX" ON ALL ADVERTISING, VERBAL OR WRITTEN. I UNDERSTAND THAT THIS APPLICATION CONSTITUTES A CONTRACT BETWEEN THE CITY OF ROSWELL AND THE ORGANIZATION TO RECEIVE THE FUNDS, SHOULD THE FUNDS BE APPROVED BY THE OCCUPANCY TAX ADVISORY BOARD AND THE CITY OF ROSWELL GOVERNING BODY. I UNDERSTAND FUNDING MAY BE DENIED OR THAT APPROVED FUNDING AMOUNTS MAY DIFFER FROM THE AMOUNT REQUESTED ON THE APPLICATION. I ALSO UNDERSTAND THAT THE DISBURSEMENT OF FUNDS IS ON A DRAWDOWN REIMBURSEMENT BASIS (matched by Lodgers' Tax at 50% up to the funded amount, a one-to-one match).

NAME (PRINT) OF APPLICANT MAKING REQUEST: JAN OLESINSKI or PERRY TOLES

SIGNATURE OF APPLICANT:

(SEND CHECK TO) ADDRESS / CITY / STATE / ZIP: 900 MASON DR, ROSWELL, NM 88201

PHONE: 575 937 6196

CELL: 575 937 6196

E-MAIL: BOTTOMLESSTRI@GMAIL.COM

DATE SUBMITTED:

MAR 23 2016

90 DAYS? Y/N

TO BE PRESENTED AT MEETING ON:

3-29-16

➤ ATTACH TOTAL PROPOSED BUDGET FOR EVENT ALONG WITH A DETAILED ADVERTISING/MARKETING BUDGET.

➤ PLEASE FEEL FREE TO ADD ADDITIONAL PAGES, SAMPLES OF ADS OR BROCHURE ARTWORK.

➤ PLEASE PROVIDE ORIGINAL APPLICATION PLUS (+) 5 COPIES OF APPLICATION, ADDITIONAL PAGES AND /OR SAMPLES

➤ MAIL OR DELIVER TO CITY OF ROSWELL, c/o Lodger Tax Grant Request, 425 N RICHARDSON, (P O BOX 1838), ROSWELL, NM 88202-1838

\* SEE MEETING SCHEDULE FOR APPLICATION DUE DATES. (These are "Received by" dates, not postmarked dates.) Revised Jan 7, 2016



NAME OF EVENT: 2016 BOTTOMLESS TRIATHLON
DATE(S) OF EVENT: JULY 9, 2016
NAME OF ORGANIZATION: BOTTOMLESS TRIATHLON

PROPOSED ELIGIBLE EXPENSES:

ELIGIBLE EXPENSES:	LOCAL AMOUNT	OUT –OF-TOWN AMOUNT	TOTAL AMOUNT	Out-of-Town %
NEWSPAPER			0.00	
MAGAZINE		360.00	360.00	100
RADIO			0.00	
TELEVISION			0.00	
INTERNET			0.00	
PRINTING (brochures, posters, cards)	50.00	200.00	250.00	80
MAILING			0.00	
T-SHIRTS (or other marketing items)	500.00	1,000.00	1,500.00	66
SECURITY			0.00	
CLEAN UP (Sanitation)			0.00	
OTHER:		2,000.00	2,000.00	100
SUB TOTALS	550.00	3,560.00	4,110.00	

TOTAL ELIGIBLE EXPENSES: \$ 4,110.00 (50% = \$ 2,055.00 )  
list the 50% or less as the amount requested on page 1.

IF YOU ARE REQUESTING SPONSORSHIP FROM A CITY OF ROSWELL DEPARTMENT – COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF SPONSORSHIP	ESTIMATED COST	*City use only*

IF YOU ARE REQUESTING CITY EMPLOYEES – PLEASE COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF WORK REQUESTED	# OF EMPLOYEES	DATES/TIME REQUIRED	TOTAL HOURS

IF YOU ARE REQUESTING CITY EQUIPMENT – PLEASE COMPLETE THE FOLLOWING:

DEPARTMENT	TYPE OF EQUIPMENT	EST COST per day	# DAYS REQUIRED	TOTAL COST *City use only*
Parks and Recreation	Traffic cones			

## **2015 EVENT INFORMATION:**

**2015 Bottomless Triathlon: July 11, 2015**

**Awarded Amount: \$2,000.00      Reimbursed Amount: \$2,000.00**

1. Event Report (includes summarized survey information)

**2015 Bottomless Triathlon**  
**July 11, 2015**

**REPORT**  
**To the Roswell Lodgers Tax**

The event set another registration/participation record with 164 registered athletes, including 8 teams of 3 individuals. 103 males and 61 females registered. There ended up being 148 participants on race day. Two of the "no-shows" were actually there and decided not to race in order to be able to watch their children participate.

37 participants were from the Roswell area, the remaining from out of town. 34 traveled less than 100 miles to participate (Alamogordo, Artesia, Carlsbad, Lovington, Hobbs, Portales, Clovis, Lincoln); 84 traveled about 200 miles (Albuquerque/Santa Fe area, El Paso/Las Cruces area, West Texas area, including 7 athletes from Juarez Mexico); the remaining came from far away places like Aztec NM, Alpine TX, Frisco TX, Glenwood Springs CO, Pennsylvania, North Carolina and Arizona.

Every registered participant who picked up their race packet filled out a survey asking how many nights they were staying this trip, where they were staying and how many non-participants were traveling with them. The Results of the survey are:

- 113 non-participants traveled to Roswell with the registered athletes
- 84 parties stayed at least one night, a dozen parties stayed at least 2 nights
- 49 parties stayed in hotels
- 10 parties camped (mostly at the Bottomless Lakes State Park)
- 2 indicated that they were staying with family

We appreciate the support from the Roswell Lodgers Tax. We believe this was a banner year for the Bottomless Triathlon partly due to the assistance received from the Lodgers Tax to help us advertise the event on postcards, t-shirts, awards, facebook, and our new "Chip-Timing" and Results web page. It is our belief that the biggest attractions for the event this year was the addition of electronic chip timing and results by CCR Timing that will continue to attract repeat and first time participants to future events. The participants were also very excited about the road improvements made by NMDOT.

If you have any questions or require additional information, please do not hesitate to contact us.

Jan Olesinski  
575-624-8284

Perry Toles  
575-622-5863

Dated July 29, 2015

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 21.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Infrastructure

**CONTACT:** Louis Najar

**CHAIR:** Jeanine Corn-Best

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**ACTION REQUESTED:**

Consider approval of the Roswell Museum and Art Center Roof Replacement Award.

**BACKGROUND:**

The Roswell Museum and Art Center roof has deteriorated and is in need of replacement. The roof is currently leaking in several places which is jeopardizing several galleries throughout the museum. The proposed award is to Holloway Construction company in the amount of \$672,078.54.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

The project award for the Roswell Museum and Art Center roof replacement will not exceed \$750,000 including the GRT. Funding in the amount of \$750,000 is available in the FY2016 Final Budget Bonds.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Infrastructure Committee recommended approval the Roswell Museum and Art Center Roof Replacement Award at their meeting on April 8, 2016.

**STAFF RECOMMENDATION:**

City Council consideration of the Roswell Museum and Art Center Roof Replacement Award as presented.

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**Attachments**

Museum Roof Replacement Award

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## CES Proposal

Project: Roswell Museum and Art Center Re-Roof  
 Owner: City of Roswell  
 Date: March 14, 2016

Architect: N/A  
 Date of Plan: N/A

We hereby propose to furnish the materials and perform the labor necessary for the completion of:

### Included in this bid is the following:

Thermoplastic Polyolefin (TPO) Roofing at the Roswell Museum and Art Center

- \* There are 33 different deck areas consisting of 5 different deck types. The deck types are Concrete, Tectum, Steel, Plywood, and Tongue and Groove Wood. **The dome over the Planetarium is not included in this proposal.**
- \* The roofing system over the concrete, tectum panel decking, tongue and groove decking and exposed plywood will consist of a .060 mil TPO roofing system adhered to a minimum 1 1/2" polyiso insulation sloped to drain where necessary which will be adhered to the tectum deck using foam adhesive.
- \* The roofing system over the Steel and non-exposed Plywood will consist of a .060 mil TPO roofing system adhered to a minimum 1 1/2" polyiso insulation sloped to drain where necessary which will be mechanically fastened to the deck.
- \* The roofing system currently installed over the Bassett Center addition is a fully adhered EPDM system over polyiso insulation mechanically fastened to a steel deck. At this area: only the existing membrane will be removed in order to retain the existing R Value of the polyiso insulation. The new system will consist of a .060 mil TPO roofing system adhered to a minimum 1/2" recovery board which will be mechanically fastened to the deck.
- \* A Manufacturer's 10 year warranty will be provided. All wall penetration flashings will be installed in accordance with the manufacturer's 10 year warranty details.

### NOTE:

The existing roofing systems will be removed over areas containing art work. The roofing demolition process is violent and could cause dust and debris to fall inside the building at all locations and could possibly dislodge works hanging from ceiling and walls as well as light fixtures and ceiling tiles. The tongue and groove decking over the Hurd gallery WILL allow for dust, debris, and possibly asphalt to filter through the spaces between deck planks. The contractor excludes any and all responsibility in protection or handling of art work and will not move or cover pieces of art. The roofing contractor will

We hereby propose to complete the work as described above for the sum of: CES Contract # 2013-026 912-306 HCCLLC

RS Means Cost Estimate	\$ 631,631.99
HCC CES Pricing	\$ 618,999.35
Gross Receipts Tax (7.5%)	\$ 46,424.95
Bond	\$ 6,654.24

Six Hundred and Seventy-Two Thousand, Seventy-Eight dollars and Fifty Four Cents

**\$672,078.54**

Payment to be made as follows:

### Monthly Progress Payments

\* Pricing Includes Bond and GRT

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specification involving extra cost will be executed only upon written orders, and will

Authorized  
Signature

*Byron Holloway*



Roswell Museum and Art Center  
Year 2016  
Unit Detail Report

Prepared By:  
Byron Holloway  
Holloway Construction

LineNumber	Description	Quantity	Unit	Total Incl. O&P	Ext. Total Incl. O&P
<b>Division 01 General Requirements</b>					
013113200220	Field personnel, project manager, maximum	1.00	Week	\$4,325.00	\$4,325.00
013113200280	Field personnel, superintendent, maximum	16.00	Week	\$4,000.00	\$64,000.00
015416500100	Forklift crew, all-terrain forklift, 45' lift, 35' reach, 9000 lb. capacity, weekly use	16.00	Week	\$5,462.40	\$87,398.40
015416500100	Permits rule of thumb, most cities, minimum	1.00	Job	\$27.31	\$436.99
015433406410	Rent toilet portable chemical, Excl. Hourly Oper. Cost.	4.00	Month	\$231.06	\$924.22
015433406410	Rent toilet portable chemical, Excl. Hourly Oper. Cost.	4.00	Month	\$231.06	\$924.22
<b>Division 01 General Requirements Subtotal</b>					<b>\$158,008.83</b>
<b>Division 07 Thermal and Moisture Protection</b>					
070505100220	Selective demolition, thermal and moisture protection, flashing, sheet metal	5,800.00	S.F.	\$1.21	\$7,018.00
070505100220	Permits rule of thumb, most cities, minimum	1.00	Job	\$0.01	\$35.09
070505100220	Workers' compensation & employer's liability insurance, roofing	1.00	Payroll	\$0.38	\$2,206.46
070505102270	Selective demolition, thermal and moisture protection, roof edge, gravel stop	5,292.00	L.F.	\$0.37	\$1,958.04
070505102270	Permits rule of thumb, most cities, minimum	1.00	Job	\$0.00	\$9.79
070505102270	Workers' compensation & employer's liability insurance, roofing	1.00	Payroll	\$0.12	\$615.61
070505103620	Selective demolition, thermal and moisture protection, roofing, built-up, 5-ply, excluding gravel	48,473.00	S.F.	\$1.11	\$53,805.03
070505103620	Permits rule of thumb, most cities, minimum	1.00	Job	\$0.01	\$269.03
070505103620	Workers' compensation & employer's liability insurance, roofing	1.00	Payroll	\$0.35	\$16,916.30
070505109000	Selective demolition, thermal and moisture protection, minimum labor/equipment charge	1.00	Job	\$175.83	\$175.83
070505109000	Permits rule of thumb, most cities, minimum	1.00	Job	\$0.88	\$0.88



LineNumber			Description	Quantity	Unit	Total Incl. O&P	Ext. Total Incl. O&P
070505109000			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$55.28	\$55.28
072216101735			Polyisocyanurate insulation, for roof decks, 2-1/2" thick, 2#/CF density, fastening excluded	48,473.00	S.F.	\$1.49	\$72,224.77
072216101735			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.01	\$361.12
072216101735			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$0.08	\$4,114.78
072216101765			Roof deck insulation, polyisocyanurate, tapered for drainage, fastening excluded	48,473.00	B.F.	\$0.85	\$41,202.05
072216101765			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.00	\$206.01
072216101765			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$0.06	\$3,047.98
075423100200			Thermoplastic-polyolefin roofing (TPO), 60 mils, heat welded seams, fully adhered	490.00	Sq.	\$195.81	\$95,946.90
075423100200			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.98	\$479.73
075423100200			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$28.05	\$13,743.34
075423100200			Thermoplastic-polyolefin roofing (TPO), 60 mils, heat welded seams, fully adhered	180.00	Sq.	\$195.81	\$35,245.80
075423100200			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.98	\$176.23
075423100200			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$28.05	\$5,048.57
077119101600			Gravel stop, polyvinyl chloride, 9" face height	2,600.00	L.F.	\$11.29	\$29,354.00
077119101600			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.06	\$146.77
077119101600			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$1.29	\$3,359.68
077126100020			Reglet, aluminum, in parapet, .025" thick	5,292.00	L.F.	\$4.15	\$21,961.80
077126100020			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.02	\$109.81
077126100020			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$0.63	\$3,310.97
077273100100			Pitch pockets, adjustable, welded corners, 4" to 7", 4" deep	12.00	Ea.	\$26.84	\$322.08
077273100100			Permits rule of thumb, most cities, minimum	1.00	Job	\$0.13	\$1.61
077273100100			Workers&#39; compensation & employer&#39;s liability insurance, roofing	1.00	Payroll	\$2.80	\$33.58

Division 07 Thermal and Moisture Protection Subtotal

**\$413,462.92**



LineNumber		Description	Quantity	Unit	Total Incl. O&P	Ext. Total Incl. O&P
<b>Division 23 Heating, Ventilating, and Air Conditioning (HVAC)</b>						
239110106320	<input checked="" type="checkbox"/>	Curbs/pads prefabricated, pad, condenser, fiberglass reinforced concrete with polystyrene foam core, 2" thick, 36" x 48"	77.00	Ea.	\$203.64	\$15,680.28
239110106320	<input checked="" type="checkbox"/>	Permits rule of thumb, most cities, minimum	1.00	Job	\$1.02	\$78.40
239110106320	<input checked="" type="checkbox"/>	Workers's compensation & employer's liability insurance, roofing	1.00	Payroll	\$40.00	\$3,079.84
<b>Division 23 Heating, Ventilating, and Air Conditioning (HVAC) Subtotal</b>						<b>\$18,838.52</b>
<b>Subtotal</b>						<b>\$590,310.27</b>
<b>General Contractor's Markup on Subs</b>				0.00%		<b>\$0.00</b>
<b>Subtotal</b>						<b>\$590,310.27</b>
<b>General Conditions</b>				0.00%		<b>\$0.00</b>
<b>Subtotal</b>						<b>\$590,310.27</b>
<b>General Contractor's Overhead and Profit</b>				7.00%		<b>\$41,321.72</b>
<b>Grand Total</b>						<b>\$631,631.99</b>

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 22.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Legal

**CONTACT:** William Zarr

**CHAIR:** Jason Perry

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**ACTION REQUESTED:**

Proposed Ordinance 16-08 - Consider to advertise for a public hearing on Proposed Ordinance 16-08 amending Section 2 of Article 9 of the Zoning Ordinance to allow day care as a special use in R-3 districts, and amending Section 7 of Article 26 by adding new sign standards for certain permitted uses in residential districts. (Perry/Zarr)

**BACKGROUND:**

Proposed ordinance number 16-08 would amend section 2 of article 9 of the Zoning Ordinance to allow day care as a special use in R-3 districts, and amend section 7 of article 26 by adding new sign standards for certain permitted uses in residential districts. Currently, daycare facilities in the R-3 zoning district are limited to a maximum of eleven children if approved by the Planning & Zoning Commission. City staff has determined that there may be some locations which might be able to accommodate a larger facility. The amendment would establish a list of conditions which would have to be met in order for a new facility to be approved.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

The City Attorney has reviewed Proposed Ordinance No. 16-08.

**BOARD AND COMMITTEE ACTION:**

The Legal Committee recommended advertising Proposed Ordinance No. 16-08 at its meeting held on March 24, 2016. The Planning and Zoning Commission reviewed and recommended this amendment on March 22, 2016.

**STAFF RECOMMENDATION:**

City Council consideration to advertise for a public hearing on Proposed Ordinance 16-08.

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**Attachments**

Proposed Ordinance 16-08 Zoning Day care

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## **PROPOSED ORDINANCE 16-08**

**AN ORDINANCE OF THE CITY OF ROSWELL AMENDING SECTION 2 OF ARTICLE 9 OF THE ZONING ORDINANCE TO ALLOW DAY CARE AS A SPECIAL USE IN R-3 DISTRICTS, AND AMENDING SECTION 7 OF ARTICLE 26 BY ADDING NEW SIGN STANDARDS FOR CERTAIN PERMITTED USES IN RESIDENTIAL DISTRICTS, PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT, PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:**

Section 1. Article 9 of the Roswell Zoning Ordinance is hereby amended to read as follows:

### **ARTICLE 9: R-3 RESIDENTIAL DISTRICT**

#### **Section 1. Purpose**

This district is intended for medium density residential uses provided through a variety of housing types and other non-residential uses that are compatible with the surrounding area and which uphold and maintain the medium density residential district. Multi-family dwellings in excess of 2 story structures are not permitted. A 6 foot screen fence shall be required along for religious assemblies, multiple family dwellings, assisted living homes, group homes, etc., and/or any Special Use (Section 2.B.), along all property lines abutting single-family residential dwellings.

#### **Section 2. Use Regulations**

A. Permitted Uses are as follows:

1. Any use permitted in the R-2 District
2. Churches, convents, monasteries, parish houses, rectories, seminaries, and other places of worship and those uses usually associated with them like child care services.
3. Multiple family dwellings with no more than 12 dwelling units per net acre for single story and 24 dwelling units per net acre for 2 story dwellings.
4. Home Occupations
5. Assisted living homes, group care homes, convalescent homes, and retirement centers (Occupancy load to be determined by the Building Inspector and Fire Marshall.)

B. Special Uses are as follows:

1. Any special use in the R-2 District.
2. Parking lots as a principal use.
3. Bed and Breakfast - 3 units maximum including the operators dwelling unit.
4. Boarding homes, lodging homes, or hostels
5. Hospitals and sanitariums
6. Libraries
7. Museums and art galleries
8. Professional offices not to exceed 10,000 square feet in gross floor area, where an additional 5% landscaping shall be provided and side yard setbacks on interior lot lines shall be no less than 10 feet.
9. Recreation buildings and community centers
10. Schools; such as, music, dance, business, commercial, and trade
11. Animal control shelters/facilities/centers
12. Veterinary hospitals
13. Barbershops and beauty shops

C. Conditional Uses are as follows:

1. Day care centers with twelve (12) or more children, subject to the following conditions of approval.
  - A. The location is compliant with the provisions of 8.16.2.1, Social Services, NMAC, for daycare operations as administered by the Children, Youth and Families Department (CYFD).
  - B. Shall not exceed 10,000 square feet in gross floor area, side yard setbacks on interior lot lines shall not be less than ten (10) feet.
  - C. Signage built to the standards of Article 26.7.
  - D. The location is accessed by a public road for use by police and fire vehicles.
  - E. Adequate and safe egress and ingress is provided for child pick-up and drop-off.
  - F. Adequate parking spaces are to be provided for all employees.

Section 2. Section 7 of Article 9 of the Roswell Zoning Ordinance is hereby amended to read as follows:

**ARTICLE 26: SIGNS:**

**Section 7. Signs Allowed with a Special Use or Conditional Use Permit in Residential Districts**

1. 3 wall signs (Per International Building Code Standards).
2. ~~1-on-premise free standing or monument, non-digital sign~~ One (1) Monument sign built to the following criteria.



- A. Not to exceed thirty-five (35) square feet in total area and five feet (5') in height above the average grade of the nearest public right-of-way. (See Figure 7.1)
- B. Monument signs shall be built on a monument base.
- C. Monument signs shall use permanent materials matching the primary building material in color and finish.
- D. Signs may be single or double-faced.
- E. The thickness of the sign shall not exceed thirty inches (30").
- F. Detached monument signs may be internally or externally illuminated.
- G. May not be constructed of wood or be a painted.
- H. An electronic message board sign shall not be allowed as part of the sign.

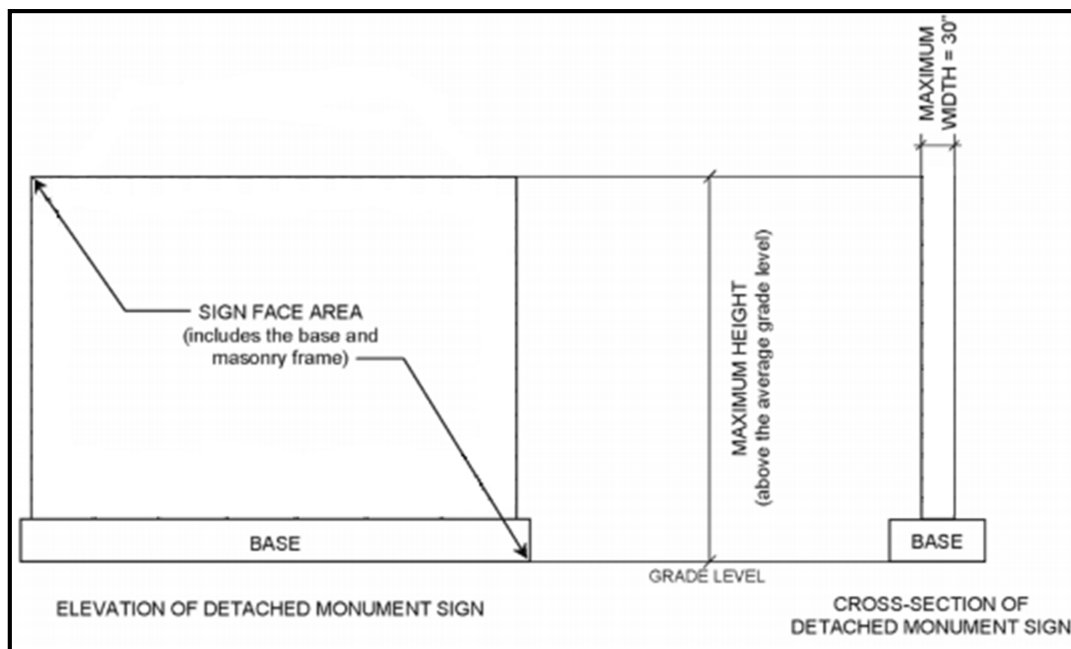


Figure 7.1

Section 3. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

Section 4. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

Section 5. This ordinance shall be effective after five (5) days following its publication as required by law.

Underscoring indicates addition to existing Code section.

~~Strike through~~ indicates delete of an existing Code section.

Underscoring in an existing Code section is not shown to avoid confusion concerning proposed changes.

PASSED, ADOPTED, SIGNED and APPROVED the 12<sup>th</sup> day of May, 2016.

CITY SEAL

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Dennis Kintigh, Mayor

ATTEST:

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Sharon Coll, City Clerk

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 23.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Proposed Ordinance 16-09 - Consider to advertise for a public hearing on Proposed Ordinance 16-09 – Amended and Restated Drinking Water Loan No. 3205-DW. (Grant/Najar/Garcia)

**BACKGROUND:**

The City constructed 36" water line project on Country Club Road which was funded in part with New Mexico Finance Authority Drinking Water State Revolving Loan 3205-DW. NMDFA is allowing amendment to loan as additional \$2,817,900 principal with a 75% forgiveness in the new additional principle. These funds would be used to continue with Phase 2 large diameter water line replacement on W. Country Club Road.

The concept of this loan extension was approved by Resolution 16-07 which was presented to and approved by Infrastructure Committee January 19, 2016, Finance Committee February 4, 2016 and full City Council February 11, 2016. Resolution 16-07 was submitted to the State as conceptual City support in February, 2016.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

The original loan was \$2,020,000. The City has been offered \$2,817,900 additional principal to continue construction with a 75% forgiveness of loan principal and cost of issuance.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

The Finance Committee recommended approval Proposed Ordinance No. 16-09 Amended and Restate Drinking Water Loan No. 3205-DW at their meeting on April 7, 2016.

**STAFF RECOMMENDATION:**

City Council consideration to authorize to advertise for Public Hearing for Proposed Ordinance 16-09 – Amended and Restated Drinking Water Loan No. 3205-DW.

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**Attachments**

Proposed Ordinance 16-09 3205-DW Loan

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RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF  
ORDINANCE NO. 16-09 OF THE CITY COUNCIL  
OF THE CITY OF ROSWELL, CHAVES COUNTY, NEW MEXICO  
MAY 12, 2016

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF CHAVES            )

The City Council (the “Governing Body”) of the City of Roswell, New Mexico (the “Governmental Unit”), met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at City Hall, located at 425 North Richardson Avenue, Roswell, New Mexico, being the meeting place of the Governing Body for the meeting held on the 12<sup>th</sup> day of May, 2016, at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

Present:

Mayor: \_\_\_\_\_

Councilors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Absent:

\_\_\_\_\_  
\_\_\_\_\_

Also Present:

\_\_\_\_\_

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Thereupon, there was officially filed with the City Clerk a copy of a proposed Ordinance in final form, as follows:

CITY OF ROSWELL, NEW MEXICO  
ORDINANCE NO. 16-09

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT (“AMENDED LOAN AGREEMENT”) BY AND BETWEEN THE CITY OF ROSWELL, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY, AMENDING THE LOAN AGREEMENT DATED OCTOBER 10, 2014 (“ORIGINAL LOAN AGREEMENT”) AND EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY AN INCREASED PRINCIPAL AMOUNT OF NO MORE THAN \$4,837,900, TOGETHER WITH INTEREST, COSTS OF ISSUANCE AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN \$2,113,425, FOR THE PURPOSE OF FINANCING THE COSTS OF PHASE 2 OF REPLACING WATERLINES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE AMENDED LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE JOINT WATER AND SEWER UTILITY SYSTEM OF THE GOVERNMENTAL UNIT; SETTING AN INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE AMENDED LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; EVIDENCING A MODIFICATION OF THE ORIGINAL LOAN AGREEMENT AND NOT A NOVATION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AMENDED LOAN AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance, unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body had determined that the Original Project would be financed with amounts borrowed under the Original Loan Agreement in the maximum principal amount of \$2,020,000; and

WHEREAS, the Governmental Unit has determined to amend the Original Loan Agreement to increase the loan amount to finance the Amended Project; and

WHEREAS, the Governing Body has determined and hereby determines that the Amended Project may be financed with amounts borrowed under the Amended Loan Agreement and that it is in the best interest of the Governmental Unit and the public it serves that the Amended Loan Agreement be executed and delivered and that the financing of the construction



of the Amended Project take place by executing and delivering the Amended Loan Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Amended Loan Agreement; and

WHEREAS, other than as described in Exhibit “A” to the Amended Loan Agreement, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, there have been presented to the Governing Body, and there presently are on file with the City Clerk, this Ordinance and the form of the Amended Loan Agreement; and

WHEREAS, the Governing Body hereby determines that the Amended Project to be financed by the Amended Loan Agreement is to be used for governmental purposes of the Governmental Unit; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Amended Loan Agreement, (ii) the use of the proceeds of the Amended Loan Agreement to finance the Amended Project, and (iii) the authorization, execution and delivery of the Amended Loan Agreement, which are required to have been obtained by the date of the Ordinance have been obtained or are reasonably expected to be obtained prior to the Closing Date.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROSWELL, CHAVES COUNTY, NEW MEXICO:

Section 1. Definitions. Capitalized terms defined in this Section 1 shall, for all purposes, have the meaning herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Additional Loan Amount” means the amount of the increase in the Maximum Principal Amount between the Original Loan Agreement and the Amended Loan Agreement. The Additional Loan Amount is \$2,817,900.

“Administrative Fee” or “Administrative Fee Component” means the 0.25% annual fee payable to the Finance Authority as 0.125% of the Amended Loan Agreement Principal Amount then outstanding as a part of each Loan Agreement Payment for the costs of originating and servicing the Loan, as shown in the Final Loan Agreement Payment Schedule.

“Aggregate Disbursements” means, at any time after the Closing Date, the sum of all Disbursements.

“Aggregate Forgiven Disbursements” means the amount of Subsidy provided in the form of principal forgiveness, and shall at any time after the Closing Date be equal to the product of the Subsidy times the Aggregate Disbursements, up to the Maximum Forgiven Principal.

“Aggregate Repayable Disbursements” means, at any time after the Closing Date, the Aggregate Disbursements less the Aggregate Forgiven Disbursements.

“Amended Loan Agreement” means the amended and restated loan and subsidy agreement dated the Closing Date between the Finance Authority and Governmental Unit which provides for the financing of the Amended Project and requires payment by or on behalf of the Governmental Unit to the Finance Authority, and any amendments or supplements thereto, including the exhibits attached to the loan agreement.

“Amended Project” means the Original Project and Phase 2 of a water line replacement project, as described in the Term Sheet.

“Approved Requisition” means a requisition in the form of Exhibit “C” to the Amended Loan Agreement, together with supporting documentation submitted to and approved by the Finance Authority pursuant to Section 4.2 of the Amended Loan Agreement.

“Authorized Officers” means the Mayor, City Manager and City Clerk of the Governmental Unit.

“Bonds” means drinking water state revolving loan fund revenue bonds, if any, issued hereafter by the Finance Authority and related to the Amended Loan Agreement and the Loan Agreement Payments.

“Closing Date” means the date of execution, delivery and funding of the Amended Loan Agreement authorized by this Ordinance.

“Debt Service Account” means the debt service account established in the name of the Governmental Unit and administered by the Finance Authority to pay the Loan Agreement Payments under the Amended Loan Agreement as the same become due.

“Disbursement” means an amount caused to be paid by the Finance Authority for an Approved Requisition for costs of the Amended Project, including the Expense Fund Component.

“DWSRLF Act” means the general laws of the State, particularly the Drinking Water State Revolving Loan Fund Act, NMSA 1978, §§ 6-21A-1 through 6-21A-9, as amended; NMSA 1978, §§ 3-31-1 through 3-31-12, as amended; NMSA 1978, and enactments of the Governing Body relating to this Ordinance including the Amended Loan Agreement.

“Drinking Water State Revolving Loan Fund” means the drinking water state revolving loan fund established by the DWSRLF Act.

“Environmental Protection Agency” means the Environmental Protection Agency of the United States.

“Expense Fund” means the expense fund hereby created to be held and administered by the Finance Authority to pay Expenses.

“Expense Fund Component” means an amount equal to one percent (1%) of each Disbursement for the Amended Project, minus any amount forgiven under the Amended Loan Agreement, simultaneously withdrawn and deposited in the Expense Fund to pay Expenses.

“Expenses” means the Finance Authority’s costs of issuance of the Amended Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering the Amended Loan Agreement, including legal fees.

“Final Requisition” means the final requisition of moneys to be submitted by the Governmental Unit, which shall be submitted by the Governmental Unit on or before the date provided for in Section 4.1(b) of the Amended Loan Agreement.

“Final Loan Agreement Payment Schedule” means the schedule of Loan Agreement Payments due on the Amended Loan Agreement following the Final Requisition, as determined on the basis of the Aggregate Repayable Disbursements.

“Finance Authority” means the New Mexico Finance Authority, created by the New Mexico Finance Authority Act, NMSA 1978, §§ 6-21-1 through 6-21-31, as amended.

“Fiscal Year” means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the duly organized City Council of the Governmental Unit and any successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Roswell, Chaves County, New Mexico.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer or other services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

“Herein”, “hereby”, “hereunder”, “hereof”, “hereinabove” and “hereafter” refer to this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest accruing on the Aggregate Repayable Disbursements then outstanding, calculated from the date of each Disbursement.

“Interest Rate” means the rate of interest on the Amended Loan Agreement as shown on the Term Sheet.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Amended Loan Agreement, up to the Maximum Principal Amount.

“Loan Agreement Payment” means, collectively, the Principal Component, the Interest Component, Expenses, and the Administrative Fee Component to be paid by the Governmental Unit as payment on the Aggregate Repayable Disbursements under the Amended Loan Agreement, as shown on Exhibit “B” thereto.

“Loan Agreement Principal Amount” means, as of any date of calculation, the Aggregate Repayable Disbursements (including the Expense Fund Component), up to the Maximum Repayable Amount.

“Maximum Forgiven Principal” means the maximum amount of loan subsidy available in the form of principal forgiveness, which is equal to seventy-five percent (75%) of the Additional Loan Amount. The Maximum Forgiven Principal is \$2,113,425.

“Maximum Repayable Principal” means the maximum amount of Aggregate Repayable Disbursements repayable by the Governmental Unit pursuant to the Amended Loan Agreement, and is equal to the Maximum Principal Amount less the Maximum Forgiven Principal. The Maximum Repayable Principal is \$2,724,475.

“Maximum Principal Amount” means \$4,837,000.

“Net Revenues” means the Gross Revenues of the System owned and operated by the Governmental Unit minus Operation and Maintenance Expenses of the System, indirect charges, amounts expended for capital replacements and repairs of the System, required set asides for debt and replacement requirements and any other payments from the gross revenues reasonably required for operation of the System.

“NMSA” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the System, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the Governmental Unit directly related and reasonably allocable to the administration of the System;

(b) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on System bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of System bonds;

(e) The costs of audits of the books and accounts of the System;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of water, materials and supplies used for or in connection with the current operation of the System; and

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit’s general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

“Ordinance” means this Ordinance No. 16-09 adopted by the Governing Body of the Governmental Unit on May 12, 2016, approving the Amended Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet and the Final Loan Agreement Payment Schedule, as supplemented from time to time in accordance with the provisions hereof.

“Original Loan Agreement” means the loan agreement dated October 10, 2014 between the Finance Authority and Governmental Unit which provided for the financing of the Original Project.

“Original Project” means the excavation, removal and replacement of 36” and 48” main water lines and operating valves.

“Parity Obligations” means any obligations of the Governmental Unit under the Amended Loan Agreement and any other obligations now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with the Amended Loan Agreement, including any such obligations shown on the Term Sheet.

“Pledged Revenues” means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to this Ordinance and described in Exhibit “A” to the Amended Loan Agreement.

“Senior Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred, payable from or secured by a pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues superior to the lien created by the Amended Loan Agreement, including any such obligations shown on the Term Sheet.

“State” means the State of New Mexico.

“Subordinated Obligations” means any bonds or other obligations of the Governmental Unit now outstanding or hereafter issued or incurred with a lien on the Pledged Revenues subordinate to the lien created by the Amended Loan Agreement and subordinate to any other outstanding Parity Obligations having a lien on the Pledged Revenues, including any such obligations shown on the Term Sheet.

“Subsidy” means the subsidy in the form of principal forgiveness for the Governmental Unit, to be applied proportionally at the time of each Disbursement to the Governmental Unit, being seventy-five percent (75%) of such Disbursement of the Additional Loan Amount.

“System” means the public utility designated as the Governmental Unit’s joint water and sewer system, and all improvements or additions thereto, including additions and improvements to be acquired or constructed with the proceeds of the Amended Loan Agreement.

“Term Sheet” means Exhibit “A” to the Amended Loan Agreement.



“Unrequisitioned Principal Amount” means the amount, if any, by which the Maximum Principal Amount exceeds the Aggregate Disbursements at the time the Governmental Unit submits the certificate of completion required pursuant to Section 6.3 of the Amended Loan Agreement.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the acquisition and completion of the Amended Project, and the execution and delivery of the Amended Loan Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Amended Project and the Amended Loan Agreement. The acquisition and completion of the Amended Project and the method of financing the Amended Project through execution and delivery of the Amended Loan Agreement are hereby authorized and ordered. The Amended Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. Moneys available and on hand for the Amended Project from all sources other than the Amended Loan Agreement are not sufficient to defray the cost of acquiring and constructing the Amended Project.

B. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Amended Loan Agreement.

C. It is economically feasible and prudent to defray, in whole or in part, the costs of the Amended Project by the execution and delivery of the Amended Loan Agreement.

D. The Amended Project and the execution and delivery of the Amended Loan Agreement in the Maximum Principal Amount pursuant to the DWSRLF Act to provide funds for the financing of the Amended Project are necessary or advisable in the interest of the public health, safety, and welfare of the residents and the public served by the Governmental Unit.

E. The Governmental Unit will acquire and construct the Amended Project, in whole or in part, with the net proceeds of the Loan.

F. Other than as described in Exhibit “A” to the Amended Loan Agreement, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Amended Loan Agreement.

G. The net effective interest rate on the Maximum Repayable Amount does not exceed the current market rate, which is the maximum rate permitted by federal law.

Section 5. Amended Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Governmental Unit and acquiring and constructing the Amended Project, it is hereby declared necessary that the Governmental Unit, pursuant to the DWSRLF Act, execute and deliver the Amended Loan Agreement evidencing a special limited obligation of the Governmental Unit to pay a principal amount of \$2,724,475 and interest thereon, and to accept a loan subsidy in the amount of \$2,113,425 and the execution and delivery of the Amended Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan and Subsidy (i) to finance the acquisition and completion of the Amended Project and (ii) to pay the Administrative Fee and Expenses of the Amended Loan Agreement and the costs of issuance of the Bonds, if any. The Amended Project will be owned by the Governmental Unit.

B. Detail. The Amended Loan Agreement shall be in substantially the form of the Amended Loan Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an amount not to exceed the Maximum Principal Amount of \$4,837,900. The Loan Agreement Principal Amount shall be payable in installments of principal due on May 1 of the years designated in the Final Loan Agreement Payment Schedule and bear interest payable on May 1 and November 1 of each of the years designated in the final Loan Agreement Payment Schedule, at the rates designated in the Amended Loan Agreement, including Exhibit "A" thereto, which rates include the Administrative Fee.

Section 6. Approval of Amended Loan Agreement. The form of the Amended Loan Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Amended Loan Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Amended Loan Agreement and attest the same. The execution of the Amended Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Amended Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Amended Loan Agreement and shall be payable solely from the Pledged Revenues. The Amended Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance, and the Amended Loan Agreement shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Amended Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of

the obligations thereunder. Nothing contained in this Ordinance nor in the Amended Loan Agreement, nor any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) or as imposing a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Amended Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Amended Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Amended Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds; Completion of Acquisition and Completion of the Amended Project.

A. Debt Service Account; Disbursements. The Governmental Unit hereby consents to creation of the Debt Service Account to be held and maintained by the Finance Authority as provided in the Amended Loan Agreement.

The proceeds derived from the execution and delivery of the Amended Loan Agreement shall be disbursed promptly upon receipt of an Approved Requisition (as defined in the Amended Loan Agreement).

Until the acquisition and completion of the Amended Project or the date of the Final Requisition, the money disbursed pursuant to the Amended Loan Agreement shall be used and paid out solely for the purpose of acquiring and constructing the Amended Project in compliance with applicable law and the provisions of the Amended Loan Agreement.

B. Prompt Completion of the Amended Project. The Governmental Unit will complete the Amended Project with all due diligence.

C. Certification of Completion of the Amended Project. Upon the acquisition and completion of the Amended Project, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that the completion of and payment for the Amended Project has been completed.

D. Finance Authority Not Responsible for Application of Loan Proceeds. The Finance Authority shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Amended Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues; Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority in an amount sufficient to pay principal, interest, Administrative Fees, Expenses and other amounts due under the Amended Loan Agreement, as provided in Section 5.2 of the Amended Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to the entire aggregate amount of Loan Agreement Payments to become due as to principal, interest on, Administrative Fees and any other amounts due under the Amended Loan Agreement, in which case moneys in such account in an amount at least equal to such principal, interest and Administrative Fee requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided in Section 9.C of this Ordinance.

C. Use of Surplus Revenues. After making all the payments required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Amended Loan Agreement, or purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Amended Loan Agreement, the Pledged Revenues are hereby authorized to be pledged, and are hereby pledged, and the Governmental Unit grants a lien on the Pledged Revenues and security interest therein, for the payment of the principal, interest, Administrative Fees, and any other amounts due under the Amended Loan Agreement, subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Amended Loan Agreement constitutes an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein, and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Amended Loan Agreement without the express approval of the Finance Authority.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Amended Loan Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Amended Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Amended Loan Agreement including, but not limited to, the execution and delivery of closing documents and reports in connection with the execution and delivery of the Amended Loan Agreement, and the publication of the summary of this Ordinance set out in Section 18 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the Closing Date, the provisions of this Ordinance may be supplemented or amended by resolution or ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. After the Closing Date, this Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Not a Novation of Original Loan Agreement. The Governing Body and the Governmental Unit expressly intend that the Amended Loan Agreement evidences a modification only of the Original Loan Agreement and is not a novation.

Section 14. Ordinance Irrepealable. After the Closing Date, this Ordinance shall be and remain irrepealable until all obligations due under the Amended Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 15. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 16. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 17. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 18 below) shall be published in a newspaper which is of general circulation in the Governmental Unit, and the Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 18. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

*[Remainder of page intentionally left blank.]*

*[Form of Summary of Ordinance for Publication.]*

City of Roswell, New Mexico  
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 16-09, duly adopted and approved by the Governing Body of the City of Roswell, New Mexico (the "Governmental Unit"), on May 12, 2016. Complete copies of the Ordinance are available for public inspection during normal and regular business hours in the office of the City Clerk, 425 North Richardson Avenue, Roswell, New Mexico 88201.

The title of the Ordinance is:

CITY OF ROSWELL, NEW MEXICO  
ORDINANCE NO. 16-09

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED LOAN AND SUBSIDY AGREEMENT ("AMENDED LOAN AGREEMENT") BY AND BETWEEN THE CITY OF ROSWELL, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, AMENDING THE LOAN AGREEMENT DATED OCTOBER 10, 2014 ("ORIGINAL LOAN AGREEMENT") AND EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY AN INCREASED PRINCIPAL AMOUNT OF NO MORE THAN \$4,837,900, TOGETHER WITH INTEREST, COSTS OF ISSUANCE AND ADMINISTRATIVE FEES THEREON, AND TO ACCEPT A LOAN SUBSIDY OF NO MORE THAN \$2,113,425, FOR THE PURPOSE OF FINANCING THE COSTS OF PHASE 2 OF REPLACING WATERLINES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF, ADMINISTRATIVE FEES AND INTEREST DUE UNDER THE AMENDED LOAN AGREEMENT SOLELY FROM THE NET REVENUES OF THE JOINT WATER AND SEWER UTILITY SYSTEM OF THE GOVERNMENTAL UNIT; SETTING AN INTEREST RATE FOR THE LOAN; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE AMENDED LOAN AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; EVIDENCING A MODIFICATION OF THE ORIGINAL LOAN AGREEMENT AND NOT A NOVATION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE AMENDED LOAN AGREEMENT.

The title sets forth a general summary of the subject matter contained in the Ordinance.

This notice constitutes compliance with NMSA 1978, § 6-14-6.

*[End of Form of Summary for Publication.]*



Section 18. Execution of Agreements. The City of Roswell through its Governing Body agrees to authorize and execute all such agreements with the New Mexico Finance Authority as are necessary to consummate the Loan contemplated herein and consistent with the terms and conditions of the Amended Loan Agreement and this Ordinance.

PASSED, APPROVED AND ADOPTED THIS 12<sup>TH</sup> DAY OF MAY, 2016.

CITY OF ROSWELL, CHAVES COUNTY, NEW  
MEXICO

By \_\_\_\_\_  
Dennis J. Kintigh, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Sharon Coll, City Clerk

*[Remainder of page intentionally left blank.]*

Governing Body Member \_\_\_\_\_ then moved adoption of the foregoing Ordinance duly seconded by Governing Body Member \_\_\_\_\_.

The motion to adopt said Ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Those Voting Nay: \_\_\_\_\_

\_\_\_\_\_

Those Absent: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (\_\_\_\_\_) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

After consideration of other matters not relating to the Ordinance, the meeting on motion duly made, seconded and carried, was adjourned.

CITY OF ROSWELL, CHAVES COUNTY, NEW  
MEXICO

By \_\_\_\_\_  
Dennis J. Kintigh, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Sharon Coll, City Clerk

*[Remainder of page intentionally left blank.]*

STATE OF NEW MEXICO                    )  
  ) ss.  
COUNTY OF CHAVES                    )

I, Sharon Coll, the duly appointed, qualified, and acting City Clerk of the City of Roswell, New Mexico (the “Governmental Unit”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the “Governing Body”), constituting the governing body of the Governmental Unit, had and taken at a duly called regular meeting held at City Hall, located at 425 North Richardson Avenue, Roswell, New Mexico, on May 12, 2016, at the hour of 6:00 p.m., insofar as the same relate to the adoption of the Ordinance and the execution and delivery of the proposed Amended Loan Agreement, copies of which are set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, §§ 10-15-1 through 10-15-4, as amended, including, the Governing Body’s open meetings Resolution No. 15-56 presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 17<sup>th</sup> day of June, 2016.

CITY OF ROSWELL, CHAVES COUNTY, NEW  
MEXICO

[SEAL]

By \_\_\_\_\_  
Sharon Coll, City Clerk

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EXHIBIT “A”

Notice and Agenda of Meeting

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 24.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** Finance

**CONTACT:** Monica Garcia

**CHAIR:** Caleb Grant

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**ACTION REQUESTED:**

Consider approval of entry way signs (Grant/Morris)

**BACKGROUND:**

City staff has been working with members of the City Council to help develop the entry way signs included as attachments. While there has been other designs, the working group determined that these 3 signs were the best designs due to the commonality of these designs with the City's history with alien themes.

Staff needs to have the City Council approve these designs so that engineered plans can be drawn up and submitted to the NMDOT for their review and approval.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

The cost for the final design, engineering and construction of the five signs is \$321,835. The funding source is Lodger's Tax with a total project cost of \$600,000. The remaining \$278,165 of the allocation is to be used for site improvements at several of the sign locations.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Finance Committee recommended approval of this signage designs at their March 3, 2016, meeting.

**STAFF RECOMMENDATION:**

Consider approval of the designs and subsequent construction of the proposed entry way signs as presented.

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**Attachments**

Entry Way Signs

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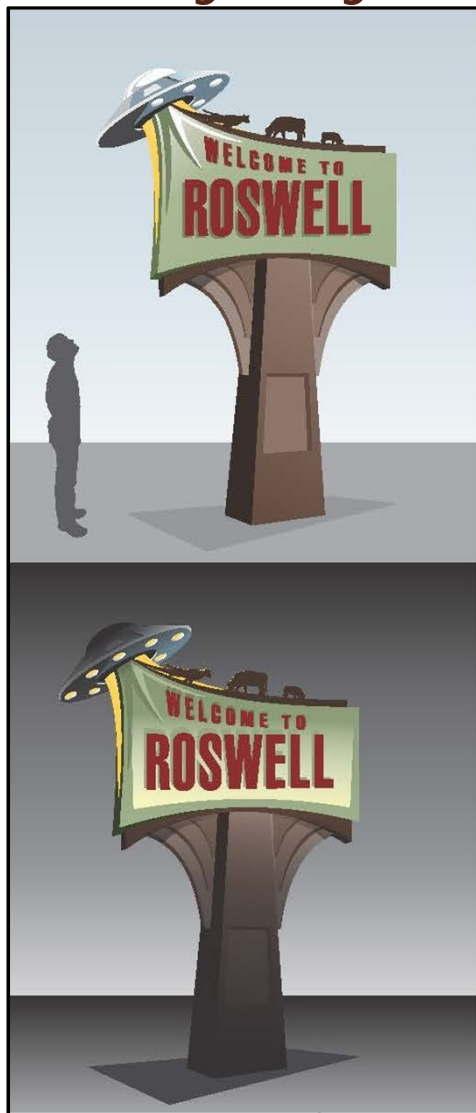
# Entryway Signs

- Design Approval: Seeking Approval of the Designs as Present
- Project Began: August 2015
- Total Project Budget: \$600,000
- Funding Source: Lodger's Tax \$600,000
- Sign Design & Installation Cost: \$321,835
- Site Design & Construction: Not to Exceed \$278,165

## Regular Item No. 24 – Entryway Signs

### Entryway Signs

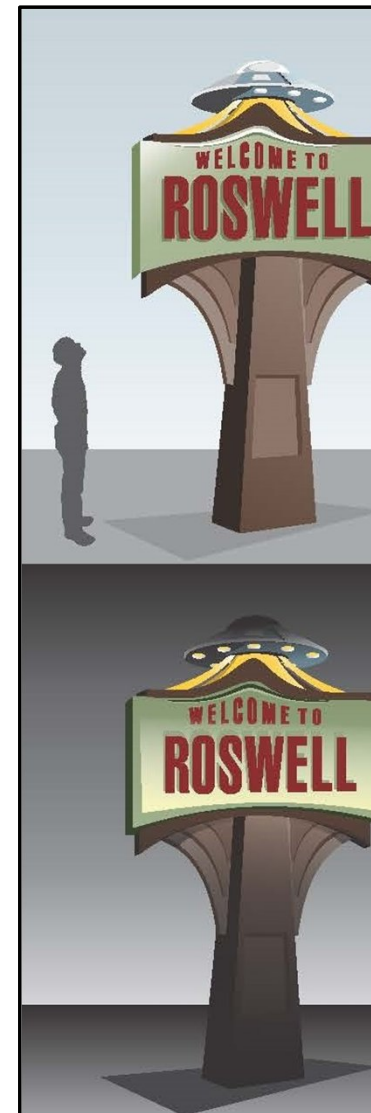
#1



#2

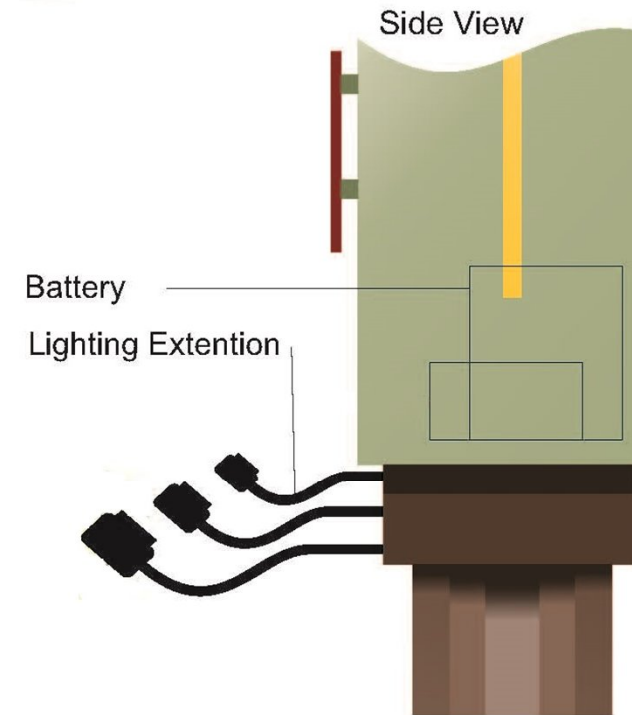
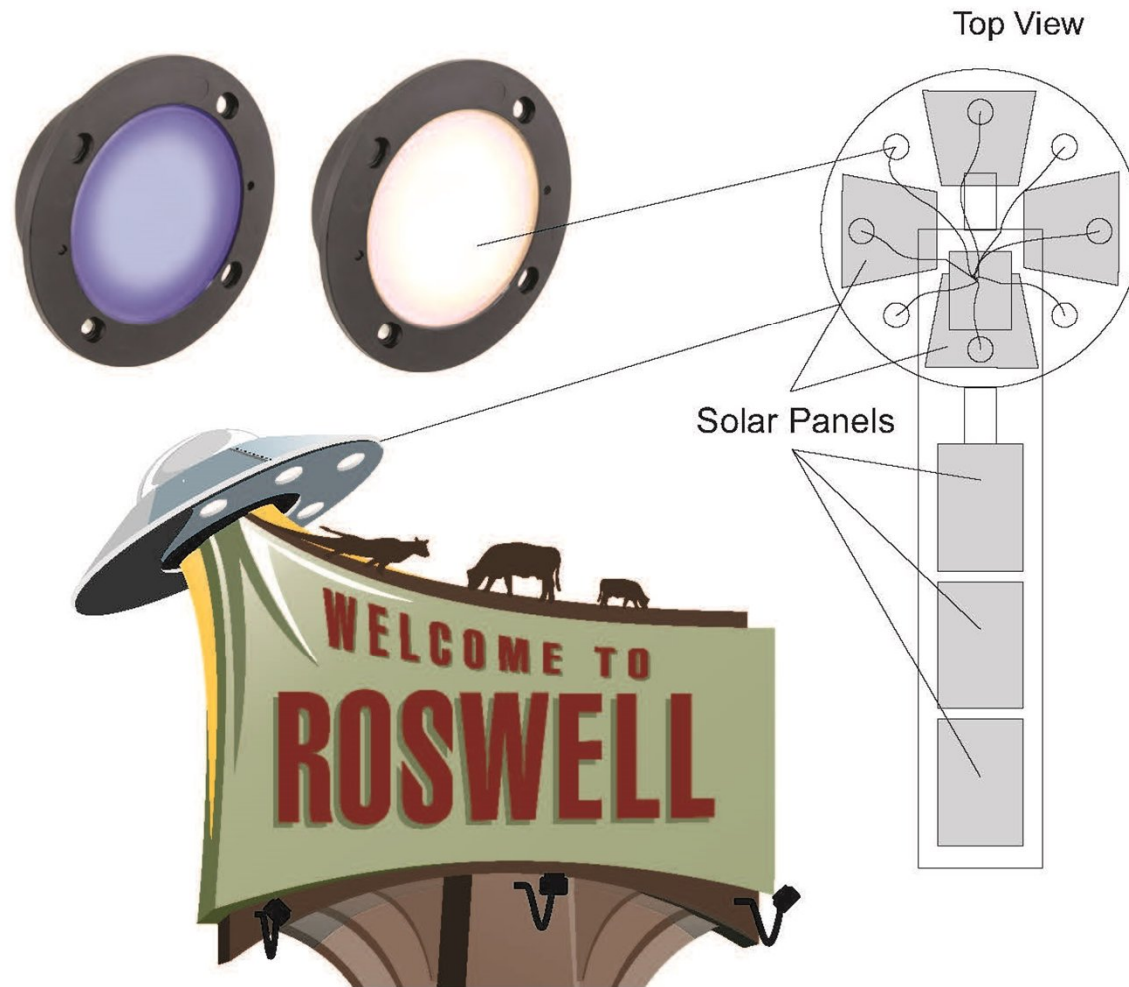


#3

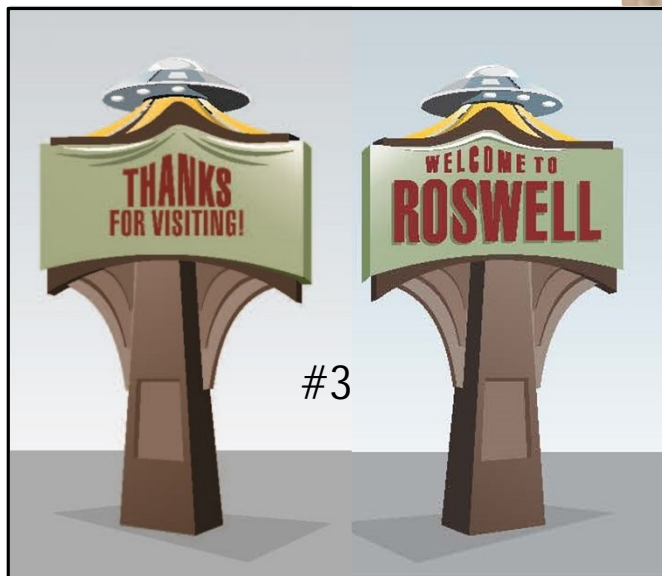


Regular Item No. 24 – Entryway Signs

# Designed For Using Solar Lighting









Regular Item No. 24 – Entryway Signs

## Entryway Signs – North Side Installed



# Entryway Signs Timeline

## Timeline for Roswell Welcome Signs

Date Updated: 3/8/2016

		Weekly Schedule																											
Task	Estimated Time to Complete*	Month 1				Month 2				Month 3				Month 4				Month 5				Month 6				Month 7			
Design and 3D Rendering	2 weeks																												
Site Plans	2 weeks																												
Engineering (Civil and Mechanical)	12 weeks																												
Order Material for Fabrication	4 weeks																												
Pull Permits for Excavation	5 weeks																												
Fabricate (5) Signs	15 weeks																												
Painting (5) Signs	7 weeks																												
Excavation, Concrete and Footings	6 weeks																												
Sign Installation	5 weeks																												
Install Lighting	8 weeks																												

*\*It is always EFG's goal to complete tasks quickly and within this estimated date; however, circumstances may arise that could slightly shift these dates. The schedule is also dependent on responsiveness from the client.*





Questions?

Thank you!

**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 25.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** Sharon Coll

**CHAIR:** N/A

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**ACTION REQUESTED:**

Consider approval of the following appointments for the Occupancy Tax Board (OTB): (Sanchez/Mayor)

- Position 1 (Lodging) - partial term from 4/1/2016 to 3/31/2017
- Position 3 (At Large) - full term from 4/1/2016 to 3/31/2020
- Position 5 (Tourist Related) - full term from 4/1/2016 to 3/31/2020

**BACKGROUND:**

The Occupancy Tax Board has five (5) members for two (2) four year terms. There are two (2) lodging related members, two (2) tourist related and one (1) at large member.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

City Council consideration of the appointments to the Occupancy Tax Board.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 26.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:** William Zarr

**CHAIR:** N/A

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**ACTION REQUESTED:**

CLOSED SESSION - Pursuant to NMSA 1978, § 10-15-1(H)(7), to discuss attorney-client privilege pertaining to threatened or pending litigation in which the City of Roswell is or may become a participant. (Sanchez/Zarr)

**BACKGROUND:**

Pursuant to NMSA 1978, § 10-15-1(H)(7), to discuss attorney-client privilege pertaining to threatened or pending litigation in which the City of Roswell is or may become a participant.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Not applicable.

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**ROSWELL NEW MEXICO  
AGENDA ITEM ABSTRACT**

**Regular City Council Meeting**

**Item No. 27.**

**Meeting Date:** 04/14/2016

**COMMITTEE:** N/A

**CONTACT:**

**CHAIR:**

N/A

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**ACTION REQUESTED:**

Department reports:

- Gross Receipts Tax
- Lodgers' Tax
- HR Report
- Roswell Public Library
- Fire Department
- Police Department
- Convention and Civic Center
- Parks and Recreation
- Code Enforcement
- RIAC

**BACKGROUND:**

Department reports.

**FINANCIAL CONSIDERATION (See Fiscal Impact below)**

Not applicable.

**LEGAL REVIEW:**

Not applicable.

**BOARD AND COMMITTEE ACTION:**

Not applicable.

**STAFF RECOMMENDATION:**

Not applicable.

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**Attachments**

GRT

Lodgers' Tax

Roswell Public Library

Fire Department

Police Department

Convention Center Activity

Convention Center Expense

Convention Center Maintenance

Parks and Recreation

Code Enforcement

RIAC

---

**CITY OF ROSWELL  
GROSS RECEIPTS TAX REPORT FY16  
MARCH 2016**

THIS MONTH'S  
CHECK

\$2,208,221.49

LAST MONTH'S  
CHECK

\$2,391,951.90

THIS MONTH'S  
CHECK  
1 YEAR AGO

\$2,387,102.40

2015 FISCAL YEAR  
COLLECTIONS TO DATE

\$22,956,420.90

2016 FISCAL YEAR  
COLLECTIONS TO DATE

\$21,464,998.54

YEAR TO DATE

LAST YEAR (MARCH 2015)

LAST MONTH (FEBRUARY 2016)

BUDGETED INCREASE FOR FISCAL YEAR 2016

PERCENT VS BUDGETED AMOUNT

-6.50%

-7.49%

-7.68%

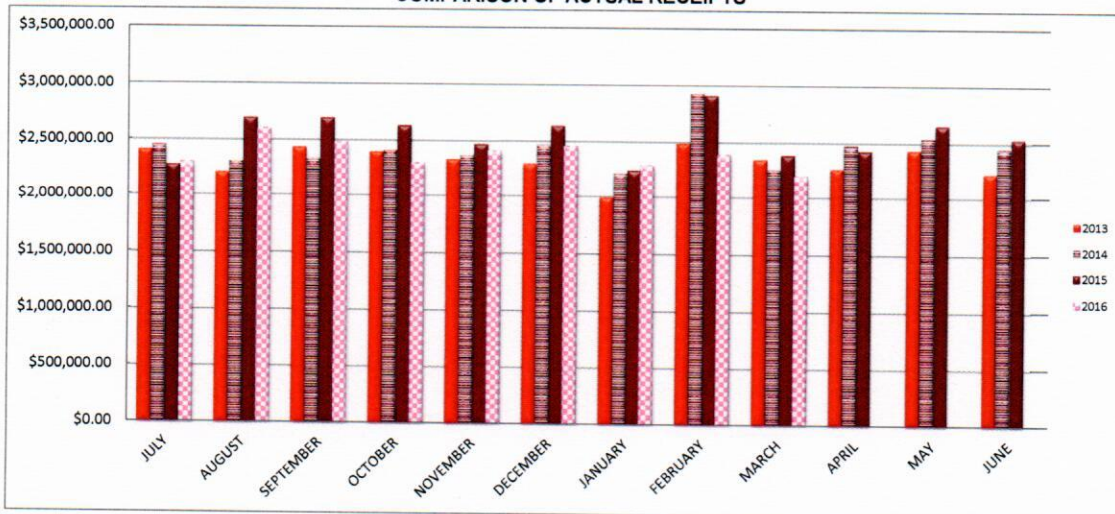
0.5%

-7.00%

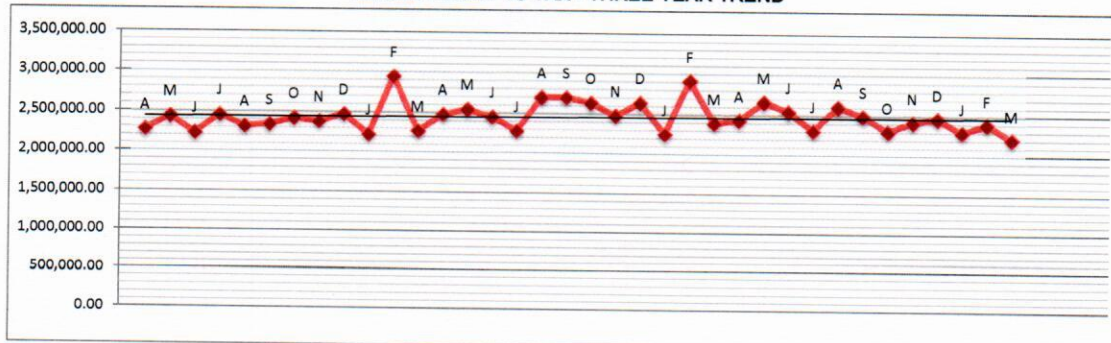
**ACTUAL GROSS RECEIPTS TAX RECEIVED**

	Fiscal 2013	Fiscal 2014	Fiscal 2015	Fiscal 2016
JULY	\$2,411,603.33	\$2,456,299.54	\$2,276,972.79	\$2,302,833.20
AUGUST	2,214,879.40	2,317,234.25	2,695,926.14	2,600,775.56
SEPTEMBER	2,435,316.19	2,337,660.35	2,695,359.27	2,489,037.09
OCTOBER	2,398,219.78	2,416,541.63	2,632,327.18	2,300,185.71
NOVEMBER	2,333,992.18	2,377,565.87	2,473,024.72	2,416,633.33
DECEMBER	2,298,027.78	2,470,059.94	2,637,083.83	2,461,769.31
JANUARY	1,996,326.28	2,223,551.93	2,247,478.13	2,293,590.95
FEBRUARY	2,490,225.25	2,941,276.82	2,911,146.44	2,391,951.90
MARCH	2,349,737.54	2,266,645.09	2,387,102.40	2,208,221.49
APRIL	2,268,112.82	2,476,673.68	2,425,986.73	
MAY	2,434,954.33	2,540,623.58	2,653,762.48	
JUNE	2,229,736.02	2,450,030.17	2,536,492.00	
<b>TOTAL</b>	<b>\$27,861,130.90</b>	<b>\$29,274,162.85</b>	<b>\$30,572,662.11</b>	<b>\$21,464,998.54</b>

**COMPARISON OF ACTUAL RECEIPTS**



**GROSS RECEIPTS TAX - THREE YEAR TREND**



**CITY OF ROSWELL  
LODGERS' TAX REPORT - FY 16  
MARCH 2016**

THIS MONTH'S  
TAXES RECEIVED

\$81,500.76

LAST MONTH'S  
TAXES RECEIVED

\$74,869.10

THIS MONTH'S  
TAXES RECEIVED  
1 YEAR AGO

\$88,540.91

2015 FISCAL YEAR  
COLLECTIONS TO DATE

\$850,975.34

ESTIMATED  
PENDING FY16  
COLLECTIONS  
\$43,309.78

2016 FISCAL YEAR  
COLLECTIONS TO DATE

\$756,696.23

YEAR TO DATE

LAST YEAR (MARCH 2015)

-11.08%

LAST MONTH (FEBRUARY 2016)

-7.95%

BUDGETED DIFFERENCE FROM FISCAL YEAR 2015 ACTUAL

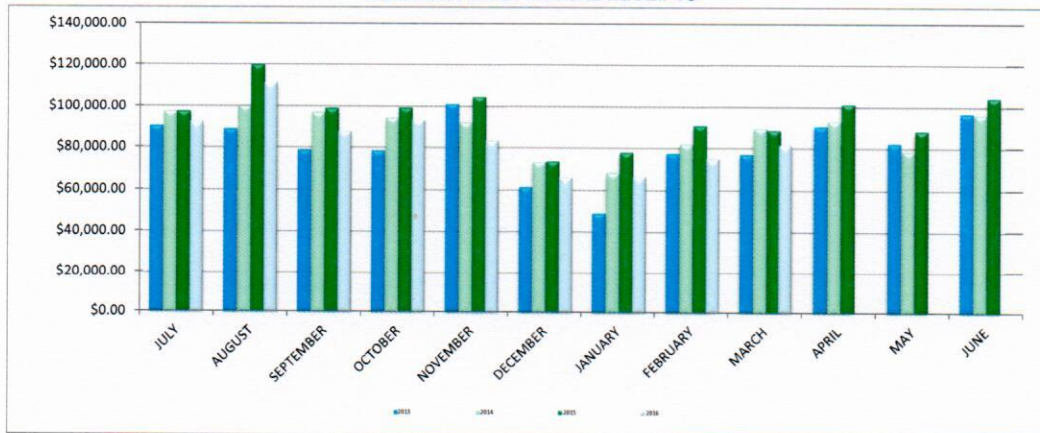
8.86%

-1.56%

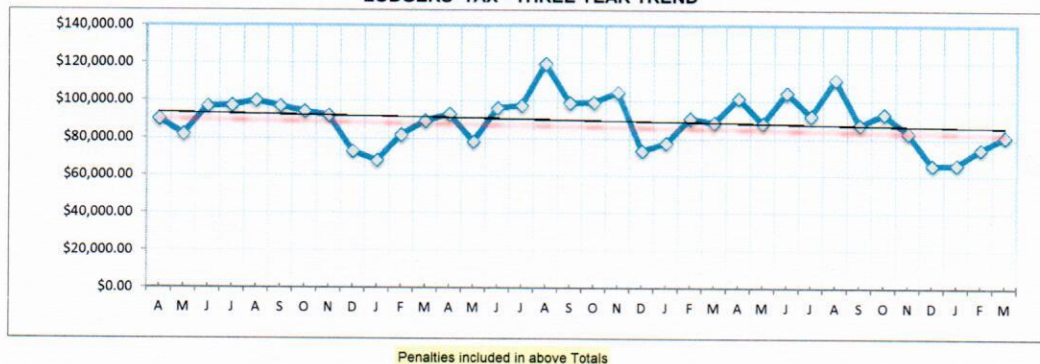
**ACTUAL LODGERS' TAX RECEIVED**

	Fiscal 2013	Fiscal 2014	Fiscal 2015	Fiscal 2016
JULY	\$90,300.33	\$97,457.04	\$97,411.08	\$92,243.43
AUGUST	88,793.82	99,919.54	119,690.78	111,352.47
SEPTEMBER	78,930.96	97,009.21	98,916.48	87,638.24
OCTOBER	78,633.40	94,330.06	99,236.39	93,266.12
NOVEMBER	101,235.86	92,167.32	104,505.66	83,360.96
DECEMBER	61,663.08	73,349.46	73,815.42	66,075.55
JANUARY	49,134.39	68,455.83	77,958.32	66,389.60
FEBRUARY	77,563.48	82,128.65	90,900.30	74,869.10
MARCH	77,103.81	89,411.65	88,540.91	81,500.76
APRIL	90,423.37	93,015.35	101,407.00	
MAY	82,396.46	78,592.18	88,272.53	
JUNE	96,994.71	96,268.38	104,358.62	
	\$973,173.67	\$1,062,104.67	\$1,145,013.49	\$756,696.23

**COMPARISON OF ACTUAL RECEIPTS**



**LODGERS' TAX - THREE YEAR TREND**

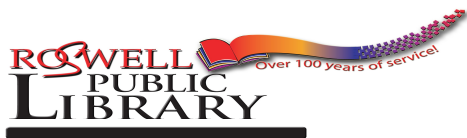


**FEBRUARY 2016'S  
EVENTS:**

Feb 2016: Luke Wade Concert, Highland Jazz & Blues, Piano Perspectives Festival & Master Class,  
Big Daddy Weave Concert, Tim Jimber Concert, Hawthorne Heights Concert, **Baby Boomer Business  
Expo, All Saints Mardi Gras, Safari Club, There were no events paid in part by Lodgers' Tax**

EVENTS PAID IN PART BY LODGERS' TAX INDICATED IN **BLUE**, CONVENTION CENTER EVENTS IN **GREEN**





## March Report

### Building

Allen Roofing started work on the replacement of the roof on February 29. Here is hoping that the weather forecast continues to include sunshine so that the roof can be completed as soon as possible.

### Personnel

Yolanda Duran, Page I, in the Circulation Department submitted her resignation. Unfortunately, with the hiring freeze in place we will not be able to replace her.

Kate Keith, Assistant Librarian in the Childrens Department has announced her retirement at the end of March. She started with the Library on October 30, 2000. Kate has read countless stories at Storytime, prepared numerous crafts, answered too many questions to count and survived 14 Summer Reading Adventures! We appreciate all that she has done at the Library and wish her all the best in her retirement.

Kay Carrasco, Administrative Assistant, marked her 5<sup>th</sup> year anniversary with us.

### Training

Webinars and training attended by staff were:  
Interactive alternative to Storytime, How to Promote Mango Any Day of the Year (2), Connecting with Teens, Social Media Marketing for Libraries (2) and Hack Your Classroom.

### Classes, tours, school visits, outreach

Fourteen Story Times were conducted this month.

Two intermediate computer classes were offered this month and four Color Between the Lines sessions were offered as well.

We also hosted 4 Makerspace sessions during Spring break. The registered attendees learned about electronic recycling: e-jewelry, E-textiles: bookmarks and bracelets, Animated GIF and 3D printed selfie robots. All of the classes were full and everyone seemed to have a great time!

Staff from the Children's Department visited Valley View School on March 3. They read Dr. Seuss books to approximately 400 K-3<sup>rd</sup> graders. East Grand Plains brought 64 second graders for a tour and Storytime.

### Technology

The upgrade to fiber optics is almost complete. We still have one major item that needs to be fixed. Needless to say the upgrade took much longer than anticipated. The public, for the most part was understanding of the down time, but everyone was very happy when they could once again check out e-books and downloadables as well as check their accounts and renew online!

### Anniversary Committee

The Committee is finalizing plans for the Library's 110<sup>th</sup> Anniversary on April 2, 2016. The festivities will kick off at 10 am that morning with proclamations and cake cutting and continue with entertainment, photo booth and a Library Trivia Scavenger Hunt. The day will conclude with author Anne Hillerman's presentation at 2 pm.

# City of Roswell Fire Department Report



To: City Council

From: Chief Devin Graham

Date: April 6, 2016

Ref: Department Report – January 1, 2016 to March 28, 2016

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Total Calls for Service – 1,978

Emergency Medical Services Division – Total Activities - 1767

CARDIAC ARRESTS – 20

Cardiac Arrest Saves – 4

**Fire Services – Total Activities 211**

Structure Fires – 13

False Alarms – 80

Vehicle Fires – 5

Grass Fires – 13

Dumpster – 9

EOD – 0

Other – 90

Fire Related Rescue - 1

**Fire Marshal's Division**

General Inspections - 188

Fire Investigations – 15

Plans Reviews - 2

**TRAINING DIVISION**

Training Hours 2016 – 2,975

Currently Conducting EMT-Basic Academy

**STAFFING AND RECRUITING**

16 Current Shift Vacancies

Currently Conducting EMT- Basic Academy with 7 Firefighter Recruits

Net 9 Vacancies

Graduation Date April 15<sup>th</sup>, 2016. Bassett Room - RMAC

We will be conducting “try-outs” in the next few weeks.

**ROSWELL POLICE DEPARTMENT**  
**MONTHLY REPORT**  
**March of 2016**

CRIMES AGAINST PERSONS	THIS MONTH	THIS MONTH LAST YEAR	YEAR TO DATE	LAST YEAR TO DATE	% Change (+/-)
<i>Murder*</i>	1	0	1	0	0.00%
<i>**Justifiable Homicide</i>	0	0	0	0	0.00%
<i>Criminal Sexual Penetration</i>	1	2	4	8	-50.00%
<i>Robbery</i>	1	3	6	12	-50.00%
<i>Assault</i>	21	10	39	36	8.33%
<i>Minors-Sexual Penetration</i>	3	2	8	5	60.00%
<i>Minors-Sexual Contact</i>	4	0	9	4	125.00%
<i>Child Abuse</i>	7	1	25	7	257.14%
<i>Crimes Against Persons (Non-Violent)*</i>	142	140	386	397	-2.77%

CRIMES AGAINST HOUSEHOLD MEMBER					
<i>Domestic Violence-Physical Contact</i>	37	34	108	83	30.12%
<i>Domestic Violence-Verbal</i>	71	64	146	106	37.74%

PROPERTY CRIMES					
<i>Burglary</i>	31	34	84	140	-40.00%
<i>Larceny</i>	106	144	328	465	-29.46%
<i>Motor Vehicle Theft</i>	3	5	26	22	18.18%
<i>Criminal Damage</i>	54	38	140	141	-0.71%
<i>Graffiti</i>	2	6	6	18	-66.67%
<i>All Other Crimes Against Property**</i>	32	41	105	105	0.00%

<b>DWI</b>	<b>9</b>	<b>8</b>	<b>41</b>	<b>30</b>	<b>36.67%</b>
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<b>PERSONS ARRESTED</b>	<b>654</b>	<b>548</b>	<b>1986</b>	<b>1489</b>	<b>33.38%</b>
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TRAFFIC REPORT					
<i>Fatal Accidents</i>	0	0	0	0	0.00%
<i>Injury Accidents</i>	20	19	74	67	10.45%
<i>Property Damage Only</i>	139	128	426	365	16.71%
<i>Traffic Citations</i>	1,076	1,400	2,651	4,213	-37.08%

TOTAL ACTIVITIES					
<i>Officer Initiated</i>	2,525	3,232	7,281	9,325	-21.92%
<i>Calls for Service</i>	2,978	2,947	8,574	8,265	3.74%

\*Less Justifiable Homicide ie: self defense, officer involved shootings, etc. \*\*The two numbers combined will reflect the homicide totals shown in Part I Crimes.

\_\_\_\_\_  
Philip Smith, Chief of Police

Prepared by Georgia Davey  
4-Apr-16

[illegible]



# MONTHLY EXPENSE REPORT

## MARCH, 2016

CURRENT				
Date	Vendor	Item	PO	Amount
3/2/2016	Swisher	Dish Washer Soap	162973	\$123.78
3/2/2016	Polar Refrigeration LLC	Steamer Repairs	163054	\$636.39
3/3/2016	UniFirst	Service	Open	\$79.99
3/4/2016	Cash & Carry	Serving Cart	Open	\$199.97
3/4/2016	Polar Refrigeration LLC	Repair Tilt Kettle	162695	\$519.48
3/10/2016	UniFirst	Service	Open	\$44.33
3/17/2015	UniFirst	Service	Open	<u>\$67.56</u>
3/21/2016	Carpet Clinic	Classrooms/Offices	163177	\$699.99
3/21/2016	Cintas First Aid	Service	163178	\$61.40
3/22/2016	Farmer Brothers	Supplies	163210	\$162.22
3/22/2016	Swisher	Rinse Aid	163212	\$254.90
3/23/2016	Auto Zone	Wiper Blades	89162	\$33.98
3/23/2016	CRM Discount Awards	Polos	163032	\$115.00
3/24/2016	UniFirst	Service	Open	\$44.33
3/24/2016	J&G Electric	Crane Lease	163201	\$150.50
2/25/2016	UniFirst	Service	Open	\$44.33
Current Total:				\$3,238.15

Pending				
Date	Vendor	Item	PO	Amount
Pending:				\$0.00





## GOALS/ACTIVITY AND MONTHLY MAINTENANCE REPORT

March, 2016

### Facilities Maintenance

Maintenance Staff attended an Irrigation Class held by Parks and Recreation at the adult Center. The Convention Center staff maintains the lawns and grounds for both the Convention Center and Museum this training will be very beneficial for the Maintenance Staff. The compressor for one of the HVAC units on the south east side of the Exhibit Hall was taken down for repair and is back in the HVAC unit and up and running. The steamer in the kitchen was repaired by Polar Express Inc. A new temperature Probe and thermostat were installed on this appliance which is used to steam vegetables and some meats. The next cleaning and sanitizing of the Kitchen is scheduled again for the end of this month. Staff constantly stays busy with the events, maintenance, cleaning, and repairs needed at the Center.

### Exterior Repair and Maintenance

Staff worked on removing trash and leaves from the entire roof over the Exhibit Hall which will eliminate the down spouts from becoming clogged when it rains or snows. Orlando from Facilities Maintenance started priming the north side exterior wall for the building and will be applying paint when the temperature allows. Orlando will also get a paint match of the existing color. Facilities Maintenance is also working on texture repairs in the lobby and bathrooms on the west side of the building.

### Floors and Carpet

The tile and grout in all the entry ways and lobby were chemically cleaned on the 1<sup>st</sup> of February. Due to all the wear and tear during the year this is done once a year to keep a nice clean appearance. Carpet in the three classrooms, east hallway and front offices were shampooed and scotch guarded on the 21<sup>st</sup> of March. The Exhibit Hall was shampooed and scotch guarded on the 24<sup>th</sup> of December and are scheduled to be shampooed and scotch guarded again on the 23<sup>rd</sup> of May. The restrooms were rescheduled to be chemical washed and sanitized for the end of April. The cleaning, washing and sanitizing of the tile floors in the center are scheduled on a quarterly basis. Staff keeps up with the spot cleaning as well as stain removal of the tile and carpets in the entire facility before and after events.

### Restrooms

Staff and Facilities Maintenance are staying on top of the drains in the Concession Stand and the sewer lines in the ladies restroom on the west side of the lobby. Hoping to eliminate the odor we have been dealing with on the north side of the lobby on windy days.

### Fire Alarm System

Old Guard LLC performed their quarterly test on March 29<sup>th</sup> with no problems. Inspection and testing of the fire alarm system has per NFPA and the Office of the Fire Marshal. Testing is done on a quarterly basis and the next test is scheduled for April.

# GOALS /ACTIVITY AND MONTHLY MAINTENANCE REPORT MARCH, 2016

## Visitors Center

The Visitors Center staff delivered over 500 brochures to all the Hotels and Motels in Roswell. They also sent out over 1000 Roswell Brochures to surrounding Cities such as Lordsburg, Elephant Butte, Clovis, Ruidoso, and Carlsbad. The visitors Center Staff is also making 100 goodie bags for the upcoming Bike Rally Scavenger Hunt set for April 9<sup>th</sup>. Thirty information packets were mailed out to people that will be visiting Roswell this year. The center has also received the new and updated Point of Interest Roswell Maps/brochures. They also call the hotels and motels to make sure they are fully stocked with the Roswell Day Trip brochures and information about other towns in New Mexico. We continue to promote all the events in Roswell on the Portales radio on Thursday morning of every week. Staff also continues to update the Visitors Center Facebook on a daily basis to bring attention to events in Roswell. Point of Interest maps have been distributed to the local campgrounds and are also given out to visitors and people inquiring about Roswell. The Visitors Center has received brochures and Visitors Guides from different cities from around the area.

## Staff

The Events Services Director met with potential event holders and gave them tours of the facility. Staff continues to work on our upcoming event files for March, April and May. They also continue to meet with event staff and ask about the outcome of their event to ensure that everything turnout well. The Convention Center accommodated a total of 15 event days with an estimated attendance of 3,755 guest. Some of the events for the month were Teacher of Character Awards, Art Faire, Arts and Crafts Show, Kiwanis Pancake Breakfast and Denim & Diamonds. Staff verified that the event calendar for 2016 was up to date. Staff went through the 2016 file and made sure that there was a file for every event on the calendar. The event receptionist updated the security, food, and liquor carters list. A list of decorating do's and don'ts was also added to the information packet.

## Ground Maintenance

Convention Center Staff continues to maintain the lawns and parking lot for the Convention Center and Museum along with cleaning under and around all the scrubs and in the parking lot and picking up trash in the spring river on the west side and next to the museum. Staff also maintains the Spring River between the Convention Center and the Museum cleaning and removing weeds and trash.

## Museum Ground Maintenance

The Convention Center Staff continues to maintain the lawn at Museum. Winterized the lawn and will manually water the lawn during the winter months. Staff has also been working on the flower beds and plants on the south side of the Museum as time allows.

## **PARKS & RECREATION DEPARTMENT - March 2016**

### **PARKS**

Total department acreage	627.2
Parks-acres in inventory	486.2
Recreation Trails	11.2 miles
Full time Employees	16
Temporaries/FTE	4/2
Est. Water Usage	8 million gallons

#### **Maintenance**

- Checking and repairing irrigation in the parks in preparation for summer.
- Spraying for weeds in the parks

#### **Specifics**

- Installed a new backstop at Martin Luther King Jr. Park
- Assisted Zoo crew to ready the carousel and train to open on Easter.
- Cleaned up East Second street benches and tree areas, including mulch.
- Moved the bleachers at Girls Softball fields to be ADA compliant and ordered the materials to install the awnings, had locates done.
- Installed the new scoreboard at Eastside Little League field.
- Replaced some security lights at the Skate Park. Raised the tree canopies there, providing better visibility and line of site around the park and mulched the trees. Parks crews made welded trash cans that they concreted in and located a picnic table to place there. They were able to come up with enough parts to build some small bleachers, and then put on a new coat of paint.
- Readied the sports fields for upcoming play.

**Submitted by Jim Burress - Parks and Grounds Manager**

**Approved by Tim Williams - Parks and Recreation Director**

### **SOUTH PARK CEMETERY**

Number of casket burials	13
Number of cremation burials	9
Veteran's Cemetery casket burials	0
Veteran's Cemetery cremation burials	4
Acres in inventory	210
Full-time employees (FTE) equivalent	7
Total Revenue for March 2016	\$26,657

#### **Maintenance**

- Repaired 3 in-valves
- Began spot spraying weeds, and spraying insecticide in pinon trees.

#### **Specifics**

- Caught up with tamping due to the high number of burials in February.

**Submitted by Ruben Esquevel -South Park Cemetery Supervisor**

**Approved by Tim Williams - Parks and Recreation Director**

### **NANCY LOPEZ GOLF COURSE AT SPRING RIVER**

Total Department Acreage	144
Trees	2200
Full Time Employees (FTE) equivalent	6
Temporaries/Full Time Equivalent	2.5
Total Revenue for March 2016	\$26,369

#### **Maintenance**

- The greens were aerated and top dressed with mortar sand on the 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> of the month. This process normally takes two days, this

year it took 3 days due to equipment failure. The aeration holes were 90 percent filled in by the end of the month.

#### **Specifics**

- One full time employee transferred to the Waste Water Treatment Plant. This vacated position is not being filled at this time.

	Fiscal 2013		Fiscal 2014		Fiscal 2015		Fiscal 2016
Jul-12	\$ 38,152.57	Jul-13	\$ 38,599.57	Jul-14	\$ 35,771.17	Jul-15	\$27,319.31
Aug-12	\$ 41,308.35	Aug-13	\$ 38,663.39	Aug-14	\$ 32,397.36	Aug-15	\$30,121.17
Sep-12	\$ 28,741.33	Sep-13	\$ 27,130.34	Sep-14	\$ 29,156.11	Sep-15	\$23,038.93
Oct-12	\$ 24,023.36	Oct-13	\$ 26,798.86	Oct-14	\$ 21,767.51	Oct-15	\$19,887.05
Nov-12	\$ 19,935.33	Nov-13	\$ 18,958.67	Nov-14	\$ 17,478.31	Nov-15	\$ 9,154.14
Dec-12	\$ 14,701.89	Dec-13	\$ 16,326.58	Dec-14	\$ 14,889.77	Dec-15	\$11,937.33
Jan-13	\$ 14,931.32	Jan-14	\$ 14,997.19	Jan-15	\$ 10,783.17	Jan-16	\$ 7,497.84
Feb-13	\$ 20,805.21	Feb-14	\$ 23,466.23	Feb-15	\$ 19,359.64	Feb-16	\$27,701.36
Mar-13	\$ 40,049.08	Mar-14	\$ 31,675.38	Mar-15	\$ 29,775.47	Mar-16	\$26,368.65
Apr-13	\$ 30,757.89	Apr-14	\$ 29,449.28	Apr-15	\$ 31,859.04	Apr-16	
May-13	\$ 44,648.98	May-14	\$ 41,017.27	May-15	\$ 46,982.97	May-16	
Jun-13	\$ 39,708.28	Jun-14	\$ 33,480.25	Jun-15	\$ 35,759.57	Jun-16	
	\$357,763.59		\$340,563.01		\$325,980.09		

**Submitted by David Blewitt - Golf Course Superintendent**

**Carlton Blewitt - Golf Course Professional**

**Approved by Tim Williams - Parks and Recreation Director**

#### **RECREATION**

Roswell Adult Center estimated attendance	8,698
Special Programs/Co Sponsorships estimated attendance	2,730
Yucca Recreation Programming estimated attendance	3,839
Cahoon Park Pool	-0-

#### **Revenues**

Yucca Admissions	1,757
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#### **Roswell Adult Center**

Concession	-0-
Classes	5,310
Rentals	812
Admission	6,347
Total	\$14,226

#### **Specifics**

- Yucca Recreation Center basketball league games started off-site – total of 960 registered to participate in this year's basketball league. Spring Break Camp successful
- Roswell Adult Center classes are going well / building remains busy  
Special Programs: Co-sponsored Gateway Easter Egg hunt, Phoenix Inaugural Flight, ENMMC Awards

#### **Maintenance**

- Yucca Center was closed permanently to the public due to heavy snow damage/mold growth and roof repairs. Still trying to secure the building from vandalism and theft.
- Roswell Adult & Senior Center: Calls made into facility maintenance for various small repairs
- Special Programs: Work has begun on repair to mobile stage
- Cahoon Pool: Facility winterized

**Program/Events**

- Yucca Recreation Basketball program wrapped up. Planning underway for the Spring & Summer programs
- Special Programs: Cinco de Mayo Celebration committee assignments – staff working on their projects
- Sports/Leagues: Sporting field repairs have been taking place. Spring leagues underway
- Roswell Adult & Senior Center: Getting geared for New Mexico Senior Olympics; Planning for 2<sup>nd</sup> session of life long scholars
- Cahoon Pool: Pool is closed for the season

**Submitted by Laurie Jerge - Recreation Superintendent**

**Approved by Tim Williams - Parks and Recreation Director**

**CITY OF ROSWELL**  
**CODE ENFORCEMENT DEPARTMENT**  
**Month: March 2016**

CODE ENFORCEMENT	This Month	This Month 2015	YTD*	2015 YTD*
Notices Mailed	816	865	5,354	5,756
Voluntary Compliance	472	508	3,157	3,562
No. of Cases Filed	28	4	175	68
No. Cases Dismissed	1	0	5	9
Resolution	93	19	455	590
Cleaned by City	15	27	269	283
Weeds	620	639	2,985	3,950
Inoperable Vehicles	44	40	332	201
Litter	61	80	657	570
Unsanitary Premises	73	85	692	570
Signs	0	2	184	75
Zoning	2	0	37	2
Obstructions	2	2	56	109
Public Nuisances	13	13	243	257
Garage Sales No permit	0	4	116	4

BUSINESS LICENSES	This Month	This Month 2015	YTD*	2015 YTD*
Total Licenses Issued	206	400	1463	1,743
Renewed Licenses	167	334	1178	1,384
New Licenses	30	35	195	196
Temporary Permits Issued	9	31	90	163
Receipts	\$10,650	\$14,346	\$57,756.00	\$62,519

\*Figures calculated to reflect FYTD



BUILDING INSPECTIONS	This Month		This Month 2015		YTD*		2015 YTD*	
New Construction	3		7		33		34	
All Other Construction	87		69		516		535	
Total Permits Issued	90		76		549		569	
Total Active Permits	452		452		***		***	
Current Valuation	\$2,105,049		\$2,447,018		\$30,991,938		\$22,456,605	
Total Fees Collected	\$25,461		\$27,967		\$194,943		\$289,352	

PLUMBING INSPECTIONS	This Month		This Month 2015		YTD*		2015 YTD*	
Plumbing & Gas Permits--New	14	\$1,073.25	15	\$1,562.50	109	\$8,631.75	101	\$10,065.25
Plumbing & Gas Permits—Misc.	34	\$1,284.50	42	\$1,737	256	\$10,561.25	299	\$14,556.25
Gas Line Inspections	15	\$466.75	27	\$858	255	\$7,081.75	181	\$6,334
Totals	63	\$2,824.50	84	\$4,157.50	620	\$26,274.75	581	\$30,955.50

ELECTRICAL INSPECTIONS	This Month		This Month 2015		YTD*		2015 YTD*	
Electric Permits--New	8	\$965	5	\$1,410	42	\$5,620	51	\$8,665
Electric Permits—Misc.	30	\$2,210	105	\$4,450	360	\$20,300	351	\$19,375
Service Change	12	\$425	15	\$580	109	\$4,200	79	\$3,055
Totals	50	\$3,600	125	\$6,440	511	\$30,120	481	\$31,095

\*Figures calculated to reflect FYTD

Signed: \_\_\_\_\_  
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ROSWELL INTERNATIONAL AIR CENTER  
REPORT FOR MARCH 2016

	This Month	This Month Last Year	This Year To Date	Last Year To Date
AIRPORT OPERATIONS:				
Number of Aircraft Operations:	2,262	5,117	15,231	18,522
Passenger Boardings:	not available	2,854	not available	7,602
REVENUES:				
Flow Fee	\$4,446	\$5,182	\$18,441	\$18,058
Landing Fees	\$1,244	\$2,693	\$4,844	\$6,528
Parking Fees	\$65,405	\$48,506	\$191,192	\$137,132
Totals:	\$71,095	\$56,381	\$214,477	\$161,718

Jennifer Brady, Director  
Roswell International Air Center

Prepared by: Walt Ramirez  
April 6, 2016